

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES BRENT JUSTICE,

Defendant.

No. 1:20-CR-01210-JAP

Pete V. Domenici U.S. Courthouse
Pecos Courtroom

Albuquerque, New Mexico

Tuesday, June 2, 2020

1:00 P.M.

TRANSCRIPT OF PROCEEDINGS

MOTION APPEALING MAGISTRATE'S DETENTION ORDER (Doc. 19)

BEFORE THE HONORABLE JAMES A. PARKER

SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (In Open Court at 1:04 P.M.)

2 THE COURT: Good afternoon. The Court is in session.
3 Have a seat, please.

4 The case this afternoon is No. 2020-1210, United
5 States of America vs. Charles Justice. Let me ask counsel to
6 state their appearances, please.

7 MR. STANFORD: Jon Stanford and Nicholas Mote for the
8 Government, Your Honor.

9 MR. ROMERO: Your Honor, Joe Romero on behalf of the
10 Defendant, Charles Justice. Also with me sitting at counsel
11 table, with the Court's permission, is the Defendant's military
12 JAG defense counsel, Captain Robert Saulter, Your Honor.

13 THE COURT: That's fine.

14 CAPTIAN SAULTER: Thank you, Your Honor.

15 THE COURT: The hearing this afternoon is on the
16 Defendant's appeal of the Magistrate Judge's detention order.
17 In preparation for the hearing, I've read the following
18 materials:

19 The Criminal Complaint, which is Document No. 1.

20 The Pretrial Services Report, Document No. 10, ex
21 parte.

22 The Motion Appealing the Magistrate's Detention
23 Order, this is Document No. 19, and attached to it is the
24 Memorandum from Colonel David Carlson. That's Document 19-1.

25 Next was the United States response, Document No. 20,

1 and attached to the response was a photo album, that's
2 Document 20-1, a second set of photos that look like it was
3 instructions on how to prepare a sound muffler, and then
4 Document 20-3, which was 74 pages entitled, "The Great
5 Replacement Towards a New Society." Then Document No. 20-4,
6 which was, again, the 10 pages of a memorandum from Colonel
7 David Carlson.

8 I did have a question about a part of Colonel
9 Carlson's conclusion. He recommended that Mr. Justice's
10 squadron commander order a mental health evaluation to
11 determine whether he poses any threat to himself, his family,
12 or his community, and restrict Justice to the confines of
13 Kirtland Air Force Base pending the results of the mental
14 health evaluation. Was the mental health evaluation done?

15 MR. ROMERO: It was, Your Honor, and my understanding
16 from talking to my client and his military defense counsel, who
17 can also elaborate on this point, is it was completely found to
18 be normal. He was found to not be suffering from any mental
19 health diagnosis or condition. And, in fact, the three days of
20 initial restriction after his release were basically waived or
21 expired in part based on that finding by the mental health
22 evaluation, such that after the initial three days of
23 restriction to base, he was no longer required or restricted to
24 base after those initial three days in significant part based
25 on the positive finding by the mental health evaluator.

1 And if you'd like, Your Honor, with the Court's
2 permission, if I've missed anything, I would ask Captain
3 Saulter to address the Court further on that issue.

4 THE COURT: well, let me ask, is the mental health
5 evaluation a part of the record?

6 MR. ROMERO: No, Your Honor.

7 THE COURT: Can I get a copy somewhere?

8 MR. ROMERO: Can Captain Saulter address you, Your
9 Honor?

10 THE COURT: Sure.

11 CAPTAIN SAULTER: Your Honor, I believe that that
12 would have to be through a request to the military treatment
13 facility at Kirtland Air Force Base. It's a military mental
14 health record that is maintained there, and even though it was
15 done pursuant to that commander directed evaluation, the
16 commander has it and the military treatment facility has it,
17 but we don't have a copy.

18 THE COURT: Okay. How would you go about getting a
19 copy?

20 CAPTAIN SAULTER: You'd either have to make a Privacy
21 Act request, so that he can request his own record from the
22 clinic, or else there's a law enforcement exception where law
23 enforcement can request the same.

24 THE COURT: Okay. All right, I was --

25 MR. MOTE: Your Honor, if I may?

1 THE COURT: Sure, go ahead.

2 MR. MOTE: Your Honor, another option is if this
3 Court were to order production of that, we could work with the
4 Government for the United States Air Force to try and get a
5 copy of that for you.

6 THE COURT: Okay. The next thing that I read was
7 Document 20-5, which is a letter of counseling from Caleb
8 Green, Assistant Flight Chief, and then next Document 20-6,
9 which is a photo array of a search of the Defendant's residence
10 and vehicle.

11 Next I read a transcription of the audio proceedings
12 on March 18, 2020, before Judge Khalsa. This basically appears
13 to be a lot of squabbling between lawyers about witnesses, and
14 that hearing was then continued to the following day whereupon
15 there was a record made of the proceedings on March 19th, 198
16 pages that I read. It's this right here.

17 And then the last thing that I read is a Memorandum
18 from United States Probation Officer Sandra Day dated June 1,
19 2020, yesterday, which again concludes that there are no
20 conditions or combination of conditions that will reasonably
21 assure the appearance of the Defendant at court, or assure the
22 safety of the community.

23 Now, are there any other written materials that I
24 should have read prior to today's proceeding?

25 MR. STANFORD: Not in the Government's opinion, Your

1 Honor. And I wanted to also add something for the Court's own
2 knowledge and also the defense. This case is still active.
3 There's an active ongoing investigation. There's evidence that
4 we are sifting through. We are conducting due diligence, and
5 we are re-examining things as becomes appropriate.

6 In the course of doing that, I was recently informed
7 by one of my investigators that -- I'll refer you to, I believe
8 it's Exhibit E or F in the Government's response to the Motion
9 for Appeal of Detention. It is an Albuquerque Police
10 Department report detailing a man at the airport, who we
11 believed was Airman Justice.

12 THE COURT: Is that in the record that I read?

13 MR. STANFORD: It is.

14 THE COURT: Well, let me see where that was. The
15 United States response --

16 MR. STANFORD: Document 23-7, Your Honor. Sorry.

17 THE COURT: Oh, 23-7.

18 MR. STANFORD: That may be the underlying detention
19 hearing.

20 THE COURT: What is Document 23?

21 MR. STANFORD: Document 23-7, it's a State of
22 New Mexico Uniform Incident Report. And I believe it's
23 Exhibit E or F.

24 THE COURT: Okay, that's part of the record?

25 MR. STANFORD: It is. It was attached to my response

1 to the Motion for Appeal of Detention Order.

2 It's not necessary that Your Honor read it at this
3 time, because what I wish to inform the Court is that we have
4 since verified that it was not Airman Justice who is the
5 subject of that police report. So we withdraw that from
6 consideration. I just wanted to let the Court know that in our
7 due diligence, we had agents go out and view video and
8 reinterview witnesses, because it was an APD case originally.
9 We wanted to also go out and do an investigation, and we do not
10 believe that it was Airman Justice who went to Cutter Aviation.

11 THE COURT: I don't believe that I've read the
12 documents to which you're referring.

13 MR. STANFORD: I'm happy to provide it, but since I'm
14 withdrawing it, you may want to --

15 THE COURT: well, no, just identify it for the
16 record. I didn't read it.

17 MR. STANFORD: Okay. It's Document 23-7.

18 THE COURT: 23-7? And what is Document No. 23? What
19 is it entitled?

20 MR. STANFORD: That is my response to the Motion for
21 Appeal of Detention Order, Document 23 in the Court's record.

22 THE COURT: well, I have the United States response
23 to Defendant's Motion Appealing Detention Order. It's filed as
24 Document No. 20.

25 MR. STANFORD: I think that's the Magistrate version,

1 Your Honor.

2 THE COURT: Okay. Is it the same thing that you're
3 referring to?

4 MR. STANFORD: Document 23 is identical, except for
5 the APD report to which I'm referring. The exhibits are
6 identical, not the motion itself, or the response itself.

7 THE COURT: Tell me, again, how the APD report is
8 identified as an exhibit.

9 MR. STANFORD: Let me see. It would be Exhibit F, or
10 23-7.

11 THE COURT: Let me see if I have that. I don't have
12 the report for some reason. The last thing I have attached to
13 your response is Document 20-6, which is 85 pages of
14 photographs.

15 MR. STANFORD: I think Document 20 is the Magistrate
16 document, Your Honor.

17 THE COURT: Okay. Well, is 23-7 the same as 20-7?

18 MR. STANFORD: No, it is not.

19 THE COURT: It's not? Well, I don't have the report
20 that you're referring to.

21 MR. STANFORD: I believe Mr. Gonzales is retrieving
22 it for you, Your Honor.

23 MR. ROMERO: Your Honor, if I may, I have a copy
24 right here. I can tender it to the Court.

25 THE COURT: Do you want me to read it? Apparently

1 it's not relevant to the case.

2 MR. STANFORD: Right.

3 MR. ROMERO: Your Honor --

4 THE COURT: I gather what the Government is doing is
5 withdrawing this exhibit.

6 MR. STANFORD: Yes. We've done a further
7 investigation and we're withdrawing that as an exhibit.

8 THE COURT: Okay. Here, let me return it to you.
9 well, in any event, for record purposes, it's a document that I
10 have not seen.

11 Okay, anything else?

12 MR. STANFORD: No, Your Honor.

13 THE COURT: Mr. Romero, anything else on behalf of
14 Defendant Justice?

15 MR. ROMERO: No, Your Honor.

16 THE COURT: Okay. Let me ask if you want to present
17 any witnesses today on behalf of the Government.

18 MR. STANFORD: Your Honor, I do have the witnesses
19 who testified at the underlying hearing, they are here for
20 questioning if the Court desires, but I have interviewed them
21 extensively all along and I don't believe their testimony would
22 change, and I don't have much new information that I would seek
23 to elicit from these witnesses. So if you are familiar with
24 the transcript of the underlying hearing, then you are also
25 familiar with the facts that we would introduce in evidence

1 today.

2 THE COURT: Okay. Well, I think what you're
3 referring to is, let's see, the transcription of the
4 proceedings on March 19th, 198 pages. Yes, I have read that.
5 As you can see from all the yellow tabs, I have focused on
6 various areas.

7 MR. STANFORD: It was quite an experience. Does the
8 Court have any questions it would like to ask of either of
9 those witnesses?

10 THE COURT: I don't believe so, but let me ask
11 Mr. Romero, do you have any further questions you want to ask
12 of them?

13 MR. ROMERO: Not initially, Your Honor. I do have a
14 witness to call.

15 THE COURT: Okay.

16 MR. STANFORD: That's fine. I'll reserve the right
17 to call them in rebuttal, Your Honor.

18 THE COURT: All right. Go ahead and call your
19 witness.

20 MR. ROMERO: We would call the Defendant,
21 Mr. Justice.

22 THE COURT: Please unlatch his right hand so he can
23 be sworn.

24 (CHARLES BRENT JUSTICE, DEFENSE WITNESS, SWORN)
25

1 DIRECT EXAMINATION

2 BY MR. ROMERO:

3 Q. Sir, could you state your full name, please.

4 A. Charles Brent Justice.

5 Q. Okay. Mr. Justice, prior to your arrest in this federal
6 case, where were you residing?

7 A. On Kirkland Air Force Base.

8 Q. Are you married, sir?

9 A. I am.

10 Q. What's your wife's name?

11 A. Beatrice Ottomanelli.

12 Q. And do you have any children?

13 A. I do, one. I have one son.

14 Q. What's his age?

15 A. He is 14 months.

16 Q. How old are you, sir?

17 A. I'm 27.

18 Q. And you were obviously in the Air Force at the time of
19 your arrest in this case. Could you tell the Court when you
20 joined the Air Force, at what age?

21 A. It was May of 2014. I want to say the first week of May
22 2014, at age 21.

23 Q. And you've been continuously in the Air Force since that
24 time?

25 A. I have, yes.

1 Q. And you're age 27 now?

2 A. Twenty-seven now, yes, sir.

3 Q. And had prior to that, what kind of employment history did
4 you have?

5 A. Various employment ranging from fast food restaurants to
6 the company Sea-Doo. I was a test rider for the company
7 Sea-Doo. Just held various jobs, everything from handyman to
8 working at my church, or whatever.

9 Q. And you're a native of what state, sir?

10 A. Florida.

11 Q. What particular city?

12 A. Melbourne, Florida.

13 Q. Sir, do you have any criminal history?

14 A. None whatsoever.

15 Q. Have you ever been convicted of any crime, either as a
16 civilian before you joined the Air Force or after you joined
17 the Air Force?

18 A. No, sir.

19 Q. And with regard to your job in the Air Force, could you
20 tell the Court what it is you do as part of your primary
21 occupation in the Air Force?

22 A. My primary occupation is under the umbrella termed
23 Security Forces, so it varies based on everything from law
24 enforcement to security. My job is particular to security, and
25 I'm the supervisor of a control center that watches over 2,000

1 nuclear weapons.

2 Q. As part of your qualifying for or performing those duties,
3 were you required to have a security clearance?

4 A. I am. I currently do possess one.

5 Q. Okay. And as part of you having a security clearance, are
6 you aware that your social media accounts can be monitored?

7 A. Absolutely.

8 Q. And that's been the case since you first joined the Air
9 Force and first started doing this job and obtained this
10 security clearance of secret?

11 A. I believe so.

12 Q. Okay.

13 A. Yes, sir.

14 Q. And in the course of your job in the Air Force, have you
15 had any kind of firearms training, just basic firearms
16 training, and specialized firearms training?

17 A. I did not attend any real specialized courses, but basic
18 firearms training, absolutely, with the weapons that we are
19 issued daily. That's the limit of my experience.

20 Q. And which are those?

21 A. You're asking about the platform, sir?

22 Q. Yes.

23 A. So everyone's familiar with the M4. That's what you
24 see in all the movies. It's your classic carbine. Your
25 Beretta M9s, that's a handgun. That's usually my daily carry

1 at work because of my position now. But I have been formally
2 trained on the 203 grenade launcher, the 240 machine gun, it's
3 belt fed, same with the 249, and various electronics that are
4 associated with those platforms. But beyond that, no other
5 weapons systems.

6 Q. And you've been so trained since what year?

7 A. That would be 2015.

8 Q. And in that time, 2015 to the present, have you ever
9 threatened or brandished a firearm to anyone?

10 A. Not in the slightest.

11 Q. Have you ever committed any kind of violent offense either
12 with or without a weapon?

13 A. Negative. Not at all.

14 Q. And you had access, daily access, to these weapons since
15 2015?

16 A. Yes, sir.

17 Q. In the course of your job as a Security Forces supervisor,
18 did you ever have any personnel issues, problems that you were
19 written up for or disciplined for?

20 A. I do have one.

21 Q. What was that?

22 A. It was for failing to wear a beret. That's one of our
23 issued headgear. In this particular instance, I was wearing my
24 helmet instead of my beret.

25 Q. What kind of disciplinary action did you receive there?

1 A. It was a Letter of Counseling. We call it an LOC.

2 Q. Okay. Anything else?

3 A. There was an Article 15, which is a non-judicial
4 punishment, for shoplifting from a store at the age of 23.

5 Q. Some years ago?

6 A. Some years ago, yes, sir.

7 Q. And you took responsibility for that?

8 A. Absolutely. It was punished and fixed within 48 hours of
9 my act being conducted. I apologized to all parties and
10 fulfilled the entire requirement for my commander within 48
11 hours and put it behind me.

12 Q. Okay. Now, you had -- you were arrested in this case
13 prior to the federal civilian court arrest by military
14 authorities; is that correct?

15 A. I was, yes.

16 Q. And my understanding, if I recall correctly, if you'll
17 bear with me, is that that occurred on or about February 19th,
18 is that correct, of this year?

19 A. Yes, sir.

20 Q. And that was an arrest by military officials regarding
21 violation -- or a UCMJ proceeding alleging violations of some
22 of the same statutes that you're here before the Court on
23 today; is that correct?

24 A. That is correct, yes, sir.

25 Q. And then subsequent to that, my understanding is that you

1 had what I think Captain Saulter corrected me is referred to as
2 a pretrial confinement hearing, the equivalent of a release
3 hearing, on February 27th; is that correct?

4 A. I believe it was the 26th, sir, or 27th. But, yes, sir,
5 we did have that hearing seven days later, after the arrest.

6 Q. All right. And at that hearing, who presided over that
7 hearing?

8 A. It was a full-bird colonel, last name Carlson.

9 Q. And why was he selected, as far as you know, to preside
10 over that hearing?

11 A. To my knowledge, he was selected by the wing commander,
12 made possible by the Government counsel at the time. They are
13 selected due to their temperament, their position on the base,
14 the people they oversee. Generally their competence when it
15 comes to looking at someone as if they're a danger or a flight
16 risk. You know, being a character judge.

17 Q. Did that particular hearing officer outrank your
18 commander?

19 A. He did, yes, sir.

20 Q. Were they of different rank or the same rank?

21 A. Different rank. My personal commander, my unit commander,
22 was below or subordinate to Colonel Carlson.

23 Q. Okay. And at that hearing, what was presented in your
24 favor in terms of you qualifying or being eligible for release?

25 A. So, many things were presented on top of Captain Saulter's

1 case. Working with me, we covered multiple character
2 statements, both written and in person. People that were
3 present testified in person; those that were not had a plethora
4 of written character statements that came in.

5 MR. ROMERO: Excuse me, Your Honor.

6 BY MR. ROMERO:

7 Q. And those are documented, or summarized in the
8 February 26, 2020, memorandum that was signed by Colonel
9 Carlson; is that correct?

10 A. That's correct.

11 Q. At the conclusion of that hearing, were you released?

12 A. I was, immediately.

13 Q. Okay. So that would have been either the 26th or the 27th
14 of February; is that correct?

15 A. Yes, sir. It was the 26th, right after the hearing.

16 Q. Okay. And what were the conditions of release as you
17 recall them?

18 A. So, I was issued -- Colonel Carlson found none himself,
19 personally, but he did recommend in his findings at the end, I
20 believe it was like an opinion of sorts, for my unit commander,
21 Colonel Chamberlain, or Lt. Colonel Chamberlain, to issue a
22 Commander Directed Evaluation, we call it a CDE, a mental
23 health check, and then a 72-hour hold was placed on me. So the
24 confines of base. The only permission to leave the confines of
25 base would be for that mental health check, which was

1 immediately conducted with a Major Carter, who was the
2 commander of mental health. He did it personally.

3 Q. Since we don't have that report in front of us, and I
4 would remind you that you're under oath --

5 A. Yes, sir.

6 Q. -- could you testify as to the execution or performance of
7 that mental health evaluation? what did you do and who did you
8 talk to?

9 A. Absolutely. So again, it was a Major Carter, last name
10 Carter. He was, to my understanding, the commander of the
11 mental health section of the military treatment facility.
12 Again, he did it personally. We did about an hour,
13 hour-and-a-half interview, followed by what must have been
14 500-plus questions on the computer, everything ranging from the
15 nonsensical to the standard. Then the results were compiled
16 and tabulated, and then we met back up. He put me in the
17 waiting room for about 30 minutes while he viewed them over,
18 then called me back to his office and pretty much said -- this
19 is a loose quote -- that I was as baseline as baseline gets.

20 Q. what did you understand that to mean?

21 A. That there were no issues. He foresaw no issues, and he
22 told me that he would forward this document onto my commander
23 and that he would release me from that 72-hour hold pending his
24 reception of that document.

25 Q. Okay. And what did you do next?

1 A. From that point, I went back home to the base. IroniC
2 enough, I met my commander at the treatment facility, so I saw
3 him face-to-face and he verified, just by happenstance, that I
4 was there to do the mental health check. I don't think he was
5 there for that purpose, but we caught up there. And then I
6 went back to the base and minded my Ps and Qs for that 72 hours
7 until I got the notification that, hey, you're released and
8 you're good to go. And then past that, there was no more
9 requirements.

10 Q. Okay. Past those 72 hours --

11 A. Past those 72 hours, yes, sir.

12 Q. -- and past the mental health evaluation?

13 A. That is correct, yes, sir.

14 Q. Okay. So that was late February, and you were on
15 conditions of release until your arrest in this case, which if
16 I recall correctly occurred, I believe, March 16th?

17 A. Yes, sir.

18 Q. So from late February to March 16th, were you free to go
19 and come off the base as you pleased?

20 A. Absolutely.

21 Q. And did you ever make any attempt to flee?

22 A. Not at all.

23 Q. Did you ever make any attempt to arm yourself?

24 A. Not at all.

25 Q. Did you ever make any attempt to harm anyone?

1 A. No, sir.

2 Q. Okay. Now, the Government has withdrawn this police
3 report where they alleged in a pleading that you, in uniform,
4 went to Cutter Aviation on or about March 13th, which I believe
5 would have been the Friday before your arrest on a Monday.

6 A. Yes, sir.

7 Q. I'm asking you, under oath, did you ever go in uniform, or
8 at any time, to Cutter Aviation?

9 A. No, sir, never.

10 Q. Were you fully compliant with your conditions of release
11 prior to your arrest on 16 March of this year pursuant to the
12 federal civilian court complaint that was filed after your
13 release on the military case?

14 A. Yes, sir, I was, in every manner.

15 Q. Now, Agent Justice, in this case there's lots of ink in
16 the Government's pleading to you basically having quite a
17 social media life. Specifically, there's a reference to social
18 media accounts. Could you tell Judge Parker what social media
19 accounts, if any, do you have or subscribe to?

20 A. I regularly actively use Instagram and Facebook as the
21 primary two, blogging everything about my daily life or
22 whatever. Like I said to you personally, I do have a Twitter,
23 but I do not use it. It's not active. I think it has my name
24 attached to it, but it's not actively utilized. But Facebook
25 and Instagram are the two.

1 Q. There's lots of screen shots offered to the Court as
2 exhibits with regard to politically sensitive, maybe
3 politically controversial, racist, borderline racist,
4 Islamophobic postings. Are those postings that you posted on
5 your social media feeds?

6 A. At no point did I ever post that, no, sir.

7 Q. How did they get on your social media feed, speaking to
8 kind of an IT illiterate person here?

9 A. Sure. So there's algorithms, of course. There's
10 mathematics that go into it. The layman's term is, if you have
11 friends and they like something -- when I message a friend or
12 communicate with that person regularly about whatever, if they
13 like a post, sometimes they'll show up as sort of a maybe
14 you'll like it, too, kind of thing. You know, your friends
15 like it, your circle likes it, maybe you'll like it, as well.
16 So you'll see things that you necessarily don't interact with
17 that just pass on by. It doesn't mean you interacted with it,
18 it just means that it might just scroll on past your screen
19 just because someone that you communicate with interacts
20 with it.

21 Q. In other words, if you have a friend who subscribes to
22 different social media sites or follows social media sites,
23 that could also be, if he tags you or if he posts something
24 where he's attaching that item, it would show possibly on
25 either your Facebook page or one of your social media accounts?

1 A. Correct, it may show up. It doesn't mean interaction had
2 occurred between myself and that item.

3 Q. So, there's this picture been painted of you, Mr. Justice,
4 as being a racist, having racist views. Could you tell me, are
5 you a racist?

6 A. Not at all.

7 Q. Tell me about that. Do you have nonwhite friends?

8 A. Absolutely. If you'd like me to clarify.

9 Q. Go ahead.

10 A. In the military, as with many jobs that employ a lot of
11 people, you're forced to interact with others that you may not
12 have ever met otherwise. Religions, ethnicities, backgrounds,
13 cultures, it doesn't matter. So, yeah, I do run the gambit,
14 especially in my unit, of all colors, all thoughts, all
15 beliefs. And a lot of them, it was banter back and forth
16 between friends. So the summarization of it is that a lot of
17 these are years old between people that are no longer in the
18 military or, you know, have moved on to other bases.

19 Q. So a lot of these social media posts that the Government
20 has included as exhibits for the Court's review, they're not
21 even current?

22 A. Not in the slightest, no, sir.

23 Q. Okay. So you serve with African-Americans?

24 A. I do.

25 Q. Hispanics?

1 A. I do.

2 Q. That's sort of part and parcel of the military life; isn't
3 that correct?

4 A. Absolutely, yes.

5 Q. Now, there was reference, and again, quite a lot of ink
6 expended on you having downloaded a manifesto by an
7 Islamophobic individual who committed a terrorist act in
8 New Zealand, if I recall correctly.

9 A. Yes, sir.

10 Q. Did you download, or did you have that document?

11 A. It was on my phone, yes, sir. By nature of how modern
12 phones work -- it was a PDF format, if that clarifies, so as
13 soon as you click on it, it downloads to your device whether
14 you'd like it to or not.

15 Q. Let's talk about that. In your job, your Security Forces
16 job, is part of your portfolio, part of your training, to
17 prepare for active shooter situations?

18 A. Yes, sir, it is. It's a part of my job.

19 Q. Okay. And in preparing for active shooter situations,
20 what kind of training, formal training have you had, and what
21 kind of informal training have you engaged in in preparation
22 for such an incident that you would be called upon to respond
23 to?

24 A. Sure. So, we'll start with the formal training. Now, it
25 changes year to year, but generally they try to assign two

1 weeks, set off, for -- let's see. There's about 40 people in
2 my particular flight that I work with day in and day out, my
3 flight family. There's about 40 of us, and we work about two
4 weeks, and that two weeks covers everything, like I said
5 before, from law enforcement to security. I'd say no more than
6 two days, three days at most is dedicated to active shooter
7 training formally. A lot of it is left to the unit to handle
8 off-line or, you know, on the downtime. The beauty of working
9 in the desert is you have quite a lot of downtime.

10 So a lot of it is handled peer-to-peer. Maybe the NCO,
11 who is a rank above you or two ranks above you, but close
12 enough to be peer-to-peer, is training you personally using
13 everything from documents, like you mentioned before, and other
14 various stuff online. We can discuss it in a very offline, but
15 personal manner, so it's not so formal and ridge. But the
16 information is still conveyed.

17 Q. My question to you is, was one of the reasons that you
18 download that manifesto was to discuss it with your
19 subordinates as part of the informal training process that you
20 engaged in?

21 A. Absolutely, which is why I'll also include, you don't see
22 the victim pictures or pictures of the shooter, himself. We
23 know there's no honor there. It was strictly what made them
24 tick, what happened before, how was the act conducted, how can
25 we catch this kind of stuff from happening again.

1 Q. Was there ever an incident in your time at Kirtland where
2 the balloon went up, so to speak, and you were called upon to
3 respond to a potential active shooter?

4 A. Yes, sir, there was. I'm one of four remaining in the
5 unit that actually experienced it, so that's why I took this
6 active shooter stuff very seriously, to educate those beneath
7 me.

8 But the event occurred, I hope I'm right on this one, in
9 2016. It might have been 2017, but 2016-2017 timeframe. The
10 alarm went off and it was a real world response to an active
11 shooter occurring on the west side of the installation. It
12 happened right at shift change. All the indicators said it was
13 real. All the indicators said this was a planned attack, and
14 it made sense in regard to the times. It still kind of chokes
15 me up, so I'm trying not to cry on the microphone here.

16 But, yeah, so we responded, and I think a lot of us
17 realized that our job isn't a joke. Everyday, day in and day
18 out, more or less, you know, sometimes it feels like a joke,
19 you're just sitting there twirling your thumbs. It became
20 suddenly very real, and so we took it seriously from that point
21 forward.

22 Q. okay. Now, according to the pleadings that I've reviewed
23 from the Government, they also reference some antipolice
24 textbooks or literature that was found during the execution of
25 the search warrant of your home. Could you explain to the

1 Court whether or not there was such material and the reason
2 for it?

3 A. So, there were. There were four books in total. I don't
4 remember all the titles. I do remember one. It was called,
5 "Our Enemies in Blue." But suffice it to say, they were all
6 textbooks from UNM. My wife graduated from UNM, and they were
7 a part of her courses, her last year courses. And we were
8 getting ready to move, so they were out on the kitchen table.
9 I'd never viewed them personally.

10 Q. And what was her major in college?

11 A. She graduated with a major in psychology and a minor in
12 criminology.

13 Q. And those textbooks related to that?

14 A. They were.

15 MR. STANFORD: Your Honor, just briefly, at no point
16 in any part of our case have we alleged that the textbooks
17 contributed to our feelings or investigative conclusions
18 regarding Airman Justice. It was solely with regard to the
19 materials that were downloaded as saved files to his phone. We
20 did not address his wife's textbooks.

21 THE COURT: All right. Go ahead.

22 MR. ROMERO: Thank you.

23 BY MR. ROMERO:

24 Q. So sort of pivoting off of Mr. Stanford's statement here,
25 again, we come back to your social media or your phone

1 material. Again, was any of this actually created by you?

2 A. Negative. No, sir.

3 Q. And in addition to the reference to you having material
4 that they find objectionable, which may or may not be accurate,
5 regardless of your First Amendment right to possess it, was
6 there also significant material in your social media account
7 that had nothing to do with any of these politically
8 controversial subjects?

9 A. Absolutely. I devote my social media to my family,
10 primarily, especially with a young son. But yes, sir, there
11 was a plethora of stuff that was definitely nonpolitical and
12 noncontroversial.

13 Q. How long have you been around firearms?

14 A. Since the age of 18, since the legal age of 18.

15 Q. So, long before you joined the Air Force?

16 A. Absolutely, yes, sir.

17 Q. And you consider yourself a firearms hobbyist in that
18 regard?

19 A. A hobbyist, an enthusiast, yes, sir, absolutely.

20 Q. Okay. So separate from that, sir, during all this time
21 that you've legally owned and possessed firearms, or handled
22 firearms in the Air Force, been trained on firearms, again,
23 have you ever espoused any belief coming out of your mouth, or
24 anything that you've written, to harm or hurt anyone of any
25 race or creed?

1 A. Not at all, no, sir. To nobody.

2 Q. And again, while you were on conditions of release in the
3 first iteration of this case, you were fully compliant with
4 those conditions?

5 A. Yes, sir.

6 MR. ROMERO: I'll pass the witness, Your Honor.

7 THE COURT: Okay. Mr. Mote.

8 MR. MOTE: May it please the Court.

9 THE COURT: Go ahead.

10 CROSS-EXAMINATION

11 BY MR. MOTE:

12 Q. Senior Airman Justice, you're a senior airman in the Air
13 Force?

14 A. I am, yes, sir.

15 Q. And that's an E3, correct?

16 A. E4.

17 Q. E4? Okay, so you're above the E1s and E2s and E3s?

18 A. That's correct.

19 Q. So you've been promoted three times?

20 A. I joined as an E3, sir, and I'm currently an E4.

21 Q. Now, I'm just an old Marine, so if I use a term that
22 doesn't line up with the Air Force, let me know, okay?

23 A. Yes, sir, will do.

24 Q. In my experience, E1s and E2s traditionally stand duty.

25 Is that kind of the case in the Air Force?

1 A. Not necessarily. I know -- I think E4, is that a baby
2 sergeant in the Marine Corps, I think? Is that the proper way
3 to say that? They used to be in the Air Force. It's no longer
4 that way. So anymore, E4 and below is, I don't want to say
5 amalgamated to the same rank, but it pretty much is, generally.

6 Q. E1s, E2s and E3s all stand duty --

7 A. Yes, sir.

8 Q. -- is that correct?

9 A. Yes, sir.

10 Q. And they stand guard and they stand sentry?

11 A. Yes, sir.

12 Q. And your military training, it's your MOS, Military
13 Occupational Specialty; that's correct?

14 A. Yes, sir.

15 Q. And what is that technically? What is your MOS?

16 A. Mine's a 3PO. And past that point, it's skill status. So
17 I'm a 3PO51.

18 Q. Okay. And you talked earlier about the weapons training
19 you've received in the Air Force. Now, would you say under
20 your MOS, you've received additional weapons training than the
21 majority of the Air Force or airmen?

22 A. Yes, sir, considering the belt fed weapons, in particular.
23 But everything else -- a finance member is going to get the
24 same pistol and rifle training that we do.

25 Q. And you talked about your training with the M4 platform;

1 is that correct?

2 A. Yes, sir.

3 Q. And that's kind of the same thing as the civilian
4 equivalent of the AR-15, correct?

5 A. Generally speaking, but there's quite a few distances.

6 Q. Why don't you please tell me what those differences are.

7 A. An M4 is shorter, select fire, capable of multiple rounds
8 per pull of the trigger. It collapses into a smaller profile.
9 It's a generally lighter weapon. Made by Colt. It's
10 engineered specifically for longevity, for military service.
11 Metallurgically, it's different.

12 Q. Okay. But the AR-15 platform, I think the biggest
13 difference is that only fires in a semiautomatic capacity --

14 A. Correct.

15 Q. -- correct?

16 A. Yes, sir.

17 Q. But the M16 and the -- or the M4, that can fire in a burst
18 mode, correct?

19 A. It can.

20 Q. All right. And there are certain platforms, variations of
21 it, that can flip to full auto --

22 A. Right.

23 Q. -- correct?

24 A. We don't have those. But, yes, sir, they are capable.

25 Q. But the civilian AR-15 is only a semiautomatic --

1 A. That's correct.

2 Q. -- is that correct? But there are ways that you can
3 convert a civilian AR-15 into a fully automatic rifle, correct?

4 A. It is possible. It requires some work, but it is
5 possible.

6 Q. Okay. And that can be done by filing down the selector
7 switch on the --

8 MR. ROMERO: Objection, Your Honor. This is totally
9 beyond the scope. I never went into the engineering skills of
10 converting a semi-auto to an auto. I restricted the
11 examination and tried my best to, Your Honor, to the issues
12 that are here before the Court today, which is danger to the
13 community and flight risk.

14 MR. MOTE: Your Honor, if I may respond.

15 THE COURT: Yes, go ahead.

16 MR. MOTE: The issue before the Court is danger to
17 the community and flight risk. On direct examination, Senior
18 Airman Justice was examined on his training on military
19 weapons. He was also examined on the contents that were
20 located on his phone, and I will get into that here in a
21 moment, Your Honor, what exactly was located on his phone. But
22 part of what was located on his phone were plans and means for
23 which Senior Airman Justice could convert an AR-15 that he
24 could find on the street into a fully automatic weapon. So I
25 think that's definitely relevant for this Court's determination

1 on safety of the community, and the door was opened wide open
2 by defense counsel on direct examination.

3 MR. ROMERO: Your Honor, I never discussed a specific
4 download, a specific plan. Whatever he downloaded was stuff
5 that is available publicly on the web. And the
6 characterization that he downloaded some plan to convert a
7 weapon from semi-auto to auto, and that he did it with a plan
8 to do so, is complete hyperbole, speculation, and jumping to
9 conclusions. Anybody can get on the web and type a recipe for
10 converting this weapon to that weapon. That's not what this
11 hearing is about, Your Honor.

12 The social media -- in terms of his weapons training,
13 he's received the same basic weapons training that everybody in
14 the military pretty much receives, and if that's the standard
15 for danger to the community, then anybody and everybody who has
16 served in the military would be found to be a danger to the
17 community. I just think we're going way off of field into an
18 area that I kept limited to, did he download these specific
19 posts that had to do with alleged racist, Islamophobic
20 positions. I didn't get into and did not discuss downloads
21 having to do with converting, or his alleged plans to convert
22 some weapon from semi-auto to auto. That was never brought up.

23 THE COURT: I'm going to allow you to inquire about
24 his reasons for doing the various downloads and collecting a
25 rather massive number of weapons.

1 MR. MOTE: Thank you, Your Honor.

2 THE COURT: You can get into that.

3 MR. MOTE: Thank you, Your Honor.

4 BY MR. MOTE:

5 Q. Senior Airman Justice, as I was saying, there are ways
6 that you can convert a civilian AR-15 semiautomatic rifle into
7 a fully automatic rifle; is that correct?

8 A. I believe so, according to what you see online, yes, sir.
9 I've never done it.

10 Q. And in addition to what I could see online, you had
11 photographs of plans and methods for how you can convert an
12 AR-15 into a fully automatic rifle on your phone, correct?

13 A. What you call plans and methods, I call schematics.
14 Again, you mentioned E4, and as I mentioned, we used to call
15 buck sergeant --

16 Q. The question that I asked you was, did you have plans or
17 schematics, in your own words, of how to convert an AR-15
18 civilian semiautomatic rifle into a fully automatic firearm on
19 your phone?

20 MR. ROMERO: Objection, Your Honor. Can he answer
21 the question? He was interrupted mid answer.

22 MR. MOTE: Your Honor, I'm merely asking the witness
23 to answer the question.

24 THE COURT: Well, let's get the record straight here.
25 why don't you proceed with the questions you want to ask. Your

1 objection brings up matters that you can cover on redirect.

2 Let's do it that way. You can go ahead.

3 MR. MOTE: Thank you, Your Honor.

4 BY MR. MOTE:

5 Q. Senior Airman Justice, as I was saying, did you have
6 photographs or schematics, using your own words, of how to
7 convert a semiautomatic rifle, AR-15, into a fully automatic
8 rifle on your phone? "Yes" or "no."

9 A. Yes, those do exist.

10 Q. Thank you. You also indicated that you had training with
11 the 240, 249, and those are belt fed fully automatic weapons,
12 correct?

13 A. They are.

14 Q. And you also had a photograph of a belt fed fully
15 automatic weapon downloaded to your phone, correct?

16 A. Yes, sir, but there's more attached to that one that I
17 think you should cover.

18 Q. Please tell me, what else was attached to that?

19 A. It's a political statement. It shows the belt fed
20 firearm, and then it shows a marijuana leaf underneath it. I
21 know that's a big point of contention in our country right now.

22 Q. What else did it say on that photograph?

23 A. It says, "In a free country, you can own both."

24 Q. Okay.

25 A. Just a political statement.

1 Q. But in this country, you cannot, as a civilian, own a belt
2 fed weapon; is that correct?

3 A. You can, yes, sir.

4 Q. And how do you do that?

5 A. You have to apply for a Special Occupation Tax license, an
6 SOT license. There are various methods --

7 Q. Does --

8 MR. ROMERO: Can he answer his question, Your Honor?

9 MR. GONZALES: Hold on, hold on. You all have to
10 stop talking over each other because the court reporter is not
11 going to be able to get everything. So don't start talking
12 over each other. Let each other finish your sentences.

13 THE DEFENDANT: Yes, sir.

14 MR. ROMERO: Your Honor, if I may, with regard to my
15 objection, Mr. Justice was in the middle of his answer when he
16 was interrupted.

17 THE COURT: I understand, and Mr. Gonzales has
18 pointed out to everyone that you need to be respectful of the
19 court reporter, in particular. She cannot take down multiple
20 voices that are speaking simultaneously. So I'll ask that the
21 person asking the question be able to complete the question
22 before an objection is interposed, and that the witness not
23 start responding to a question before the question is stated
24 completely.

25 So let's go ahead with the next question. Wait for

1 the witness's answer to it. If there's an objection to it, you
2 can state the objection after the question. Go ahead.

3 MR. MOTE: Yes, Your Honor. If I may, with the
4 Court's permission, I would like to fire up the Elmo and just
5 display that photograph. I think that would assist us in that.

6 THE COURT: Go ahead.

7 BY MR. MOTE:

8 Q. Senior Airman Justice, can you see the photograph that I
9 have displayed on the Elmo there?

10 A. No, it's blacked out right here. Now I can, thank you.

11 MR. MOTE: And just for the Court's record, what I am
12 displaying is Document 23-1, Page 3 of 44 on the Elmo here.

13 Q. Senior Airman Justice, the photograph that we were just
14 referencing before the objection is the photograph displayed on
15 the right side of the screen, correct?

16 A. It is that photograph, yes, sir.

17 Q. Okay. And what is that a photograph of?

18 A. Some belt fed machine gun, I'm not aware of which type,
19 and whether it's real or fake, I can't tell you, above a
20 picture of what appears to be a marijuana leaf.

21 Q. Okay. Both of which are, other than if you apply and
22 receive a specific ATF license, both of which are illegal to
23 possess, correct?

24 A. That is correct.

25 MR. MOTE: I'm removing the photograph from the Elmo

1 here, but with the Court's permission, I'd like to keep it
2 fired up in case we need to address additional photos, Your
3 Honor.

4 THE COURT: All right.

5 MR. MOTE: Thank you. While we're here, Your Honor,
6 since I've got this fired up, I'll just go ahead and flip
7 through a couple of these photographs that I had planned to ask
8 questions about.

9 BY MR. MOTE:

10 Q. Senior Airman Justice, can you still see that page that we
11 were just talking about?

12 A. I can, yes, sir.

13 Q. And what is that photograph on the left side of the screen
14 of?

15 A. That is the bed of my pickup with a good friend of mine.
16 It's black and white and kind of terrible to see over here, but
17 it's of several firearms that I personally own in the bed of
18 that pickup truck.

19 Q. So those are your firearms?

20 A. Yes, sir.

21 Q. And what is this picture? I've flipped over one page to
22 Page 4 of 44 of the same document. What is this picture on the
23 left?

24 A. That is a picture of a gentleman that used to work at my
25 unit. I do not know where he's at now. In or out of the

1 military, I can't tell you. And he is holding up a rifle with
2 what appears to be a suppressor attached.

3 Q. Okay. And the suppressor that you're referencing, that's
4 what's on the end of the firearm, correct?

5 A. That's what it appears to be, sir. Really, it's almost
6 like all black on my screen.

7 Q. Did you take that photograph?

8 A. No, sir.

9 Q. But it was saved to your phone?

10 A. I don't know, sir, if it was or was not.

11 Q. Have you reviewed the phone rip that was done of your cell
12 phone? Have you reviewed the extraction, the contents of your
13 phone?

14 A. I believe so, sir. I'm confused what you're referring to.
15 The phone rip?

16 Q. The extraction of the data from your telephone.

17 A. No, sir, I don't believe so.

18 Q. You have not had an opportunity to review that?

19 A. I do not think so, no, sir.

20 MR. MOTE: Let me have a moment, Your Honor.

21 BY MR. MOTE:

22 Q. Senior Airman Justice, you just talked about a minute ago
23 the possibility of converting a civilian AR-15 into a fully
24 automatic weapon; is that correct?

25 A. That is correct.

1 Q. Okay. I'm displaying more photographs, which it was
2 previously testified in the previous hearing that they were
3 extracted from your telephone, and these were saved to your
4 telephone. I'm looking at Page 7 of 44 there, Document 23-1.
5 what is that on the left and the right side of the screen?

6 A. The left side, I can't tell. It looks like a bunch of
7 numbers and lines. I can't tell you what it is. Again, me
8 being a hobbyist, I don't dabble with this kind of stuff, you
9 know. It's a curiosity, but not something I take an active
10 pursuant interest in.

11 The right-hand side, once again, I can tell the bottom
12 right-hand picture -- I'm just familiar with the bottom
13 right-hand picture, because I'm familiar with the AR platform.
14 I can tell you that's an AR. But the pictures above it, I
15 can't tell you exactly what they are.

16 Q. Senior Airman Justice, under oath today, is it your
17 testimony that you did not download these photographs to your
18 telephone?

19 A. No, it's possible that I downloaded them, but the
20 knowledge of what they are, I don't really know. And they also
21 could have been part of a mass download. Quite often pictures
22 that you find, or PDFs that you find like this, they're all
23 compiled together. So if you've been searching for one
24 particular picture, you get on Google Images, of course they're
25 public, you go to the public image, and then you go to the

1 page where that public image is found, and that page links back
2 to like a PDF. So these could have been a part of a bucket of
3 download that happened at a simultaneous time, you know, at the
4 same time frame.

5 Q. Is it your testimony today that you downloaded these
6 photographs to your telephone, but you're not sure if you've
7 ever looked at them?

8 A. Correct, yep.

9 Q. Are you familiar with the term lightning link?

10 A. No, sir.

11 Q. I'm removing the photograph from the screen.

12 Senior Airman Justice, earlier you testified under oath
13 about your Instagram and your Facebook use; is that correct?

14 A. Yes, sir.

15 Q. And you stated that sometimes profiles, Instagram
16 profiles, can pop up on your screen based on communications
17 that you have with others, correct?

18 A. Correct.

19 Q. Okay. And you testified that it's possible that these
20 photographs ended up on your phone without you downloading
21 those photographs, correct?

22 A. That is correct.

23 Q. It's possible that you were able to, just by being on
24 Instagram and the folks that you were linked with, that these
25 photographs appeared on the Instagram application based on your

1 linkage to these people, correct?

2 A. My feed, I guess is what you would call it.

3 Q. That's a great term, yes. So these showed up on your feed
4 possibly just based on links?

5 A. Based on, yeah, interactions with other members that may
6 have interacted with that post.

7 Q. Okay. Senior Airman Justice, these were found in your
8 saved photographs. So is it your testimony today that you did
9 not screen-shot and save those photographs to your telephone?

10 A. There's quite a few of them that probably I did absolutely
11 download, but there's some other ones that I do not recognize
12 whatsoever, so I cannot testify that they were on my phone or
13 that I ever viewed them, or anything else of that nature.

14 Q. Do other people download photographs onto your phone?

15 A. Not that I'm aware of, no, sir.

16 Q. Okay. And in order to -- it sounds like you're a
17 technological guy. In order to save photographs from Instagram
18 to your phone, you have to take an affirmative action to get
19 those photographs into your photo album, correct?

20 A. There's probably a multitude of ways, but that's probably
21 the most, in layman's terms, like regular way to do it, I would
22 suppose, yes, sir.

23 Q. Thank you.

24 A. I'd hesitate to call me tech savvy.

25 Q. Thank you. Did you also have a bug out list, or a bug out

1 plan saved to your phone?

2 A. It was. It was just a general preparation list.

3 Q. What did you call that?

4 A. Preparation list, I suppose is what I would call it. I
5 don't remember the title of the exact list. But it wasn't made
6 with any intention of, you know, a particular catastrophe being
7 in mind. Just a general, you know, cover-all, I suppose.

8 Q. Kind of a list of materials that you would need if you
9 needed to bug out or leave out quickly?

10 A. Yes, sir. But also in that document, it also did
11 include -- in fact, it said, assemble this list even if staying
12 in, to indicate, you know, preparation for a possible pandemic,
13 or possible rioting and looting, which we're seeing actively
14 today.

15 Q. Okay.

16 A. I think it's just a military behavior.

17 Q. As a part of your training, have you ever undergone SERE
18 training?

19 A. No, sir. The only SERE training we do is all
20 computer-based training or CBT based. We do go through SERE
21 training, but it is a very quick and brief, like I said,
22 digital, computer-based training.

23 Q. Okay. And what is the purpose of that training?

24 A. A lot of things, I believe. One of them being just to
25 vary your routes going home. You're a valuable member, so

1 you're being monitored by third parties, or could be. With the
2 assets I work with, maybe you're at increased risk of being
3 monitored, things of that nature. Just to mind your Ps and Qs,
4 be prepared, have a plan, stuff like that.

5 Q. Learn how to survive and evade if you need to, correct?

6 A. I don't know. That's more hands-on stuff. A lot of this
7 is just general when you're in the store, you know, if the same
8 gentleman is following you 15 aisles in a row, it's probably
9 not a good sign, stuff like that. But not like surviving and
10 evading in the woods or anything like that. No, that's not
11 covered with the computer.

12 Q. Okay. Your attorney earlier questioned you and he talked
13 a bit about the pretrial confinement hearing that took place on
14 Kirtland Air Force Base. Now, that is totally separate to the
15 charges that you're facing here today. Can you please explain
16 the charge for which you were charged under the military
17 justice system?

18 A. So, at the time, the pretrial release hearing was the same
19 exact charges.

20 Q. Okay. And that took place seven days after your arrest,
21 is what you testified to earlier?

22 A. The 26th of February, yes, sir.

23 Q. And the extraction of your phone that uncovered this mass
24 of materials did not occur until after this hearing had taken
25 place, correct?

1 A. I'm not aware of the exact date, no, sir.

2 Q. Okay. But the date of the hearing you said was seven days
3 after your arrest?

4 A. It was seven days, yes, sir.

5 Q. Okay.

6 MR. MOTE: Your Honor, if I may have a moment to
7 confer with co-counsel.

8 BY MR. MOTE:

9 Q. Have you ever discharged a firearm in housing on Kirtland
10 Air Force Base?

11 A. No, sir. A test shot was done with a blank, but not
12 discharged with a projectile, no, sir.

13 Q. But you discharged a firearm? It might have been a blank
14 round, but you discharged a firearm in base housing on Kirtland
15 Air Force Base, correct?

16 A. That is correct?

17 MR. MOTE: Your Honor, no further questions. Thank
18 you.

19 THE COURT: Go ahead, Mr. Romero.

20 MR. ROMERO: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ROMERO:

23 Q. Sir, after your pretrial confinement release hearing, is
24 it fair to say from discussions you had with your counsel and
25 other people present that the OSI office was not happy with

1 your being released?

2 A. That is correct, sir.

3 Q. And after your release, CYFD or Family Advocacy came and
4 did a parental termination investigation with regard to your
5 one-year-old child; is that correct?

6 A. In fact, both did at separate times, yes, sir.

7 Q. And after CYFD and the military Family Advocacy did a
8 review and investigation of your competency as a parent, what
9 did they determine?

10 A. Completely unfounded. Both departments, same result.

11 Q. Okay. Now, there's a lot of reference to photos and
12 schematics that were downloaded, either individually or as part
13 of a PDF larger dump of documents when you do such downloads.
14 As far as you know, were you committing any crime that you were
15 aware of when you did, if it was you that downloaded some of
16 these photos or schematics that are referenced?

17 A. No, sir.

18 Q. So with reference to some of this information, does it
19 again relate back to your interest in knowing about firearms
20 and being a firearms hobbyist?

21 A. It does, yes, sir, and the fact that I like to educate the
22 others that I work with. I think that's a big point of it, as
23 well.

24 Q. And with regard to the -- a long time ago I was in the
25 military, and we would talk about prep and bug out. Tell the

1 Court a little bit more about what the military teaches about
2 bug out and prep, and whether it's something unique to you and
3 this case or it's something that's more widely taught in the
4 military.

5 A. Funny enough, I think it's both, to a degree. I think
6 everyone in the military is taught, you're a prime target in an
7 ever-changing world, considering terror groups and things like
8 that. You know, the people that want to watch you, watch your
9 routes, watch what you do, what do you know.

10 Myself, more importantly, because of the assets I work
11 with, we get regular OSI briefings every six months, I believe,
12 updates to the threat level of the general area and things of
13 that nature. I know we, as what we call nuke cops, are a
14 little higher on the target list just because of what we work
15 with, what do we know, and so it's more common to find people
16 like myself, people that I work with, to just be more mindful
17 of preparing for eventualities, I guess.

18 Q. This bug out reference and having the bug out list, is
19 that consistent or inconsistent, and part of or not part of
20 your general military training?

21 A. I think it's totally consistent. It is not a requirement,
22 but I think it would be absolutely consistent to say that the
23 majority would have some sense of planning like that.

24 MR. ROMERO: May I have a moment, Your Honor?

25 THE COURT: Yes, you may.

1 BY MR. ROMERO:

2 Q. So when you were released on conditions and compliant on
3 conditions of release, where were you working? Where were you
4 assigned?

5 A. I was assigned, as an alternate duty assignment, at the
6 chapel on base, the church.

7 Q. So you were, while your military case was pending and you
8 were on conditions of release, you were not allowed to return
9 to your previous or regular job of being, excuse the
10 terminology, a nuke cop?

11 A. That's correct, yes, sir. I don't know if I was barred,
12 but I just know that I was given an alternate duty assignment.

13 Q. And you reported for duty as required?

14 A. Every day, yes, sir.

15 Q. Okay. And have you ever posted or discussed any kind of
16 sympathies or being a member of any white nationalist or
17 Islamophobic association or group?

18 A. Not in the slightest, no, sir.

19 Q. And again, with regard to the manifesto that's referenced
20 quite a bit, is that something that's publicly available and
21 downloadable on the web?

22 A. It is. That's how I got it, yes, sir.

23 Q. And are you aware and do you know other service members
24 who have downloaded the same manifesto?

25 A. At the time that the event occurred, sad to say, but we

1 did, a lot of us did download it. We took it upon ourselves, I
2 guess, to take it very seriously. I don't know if they still
3 do or not, but they did.

4 Q. And again, was the intent to do any harm to Muslims or
5 Muslim Americans?

6 A. Not at all, no, sir.

7 MR. ROMERO: Thank you. I have no further questions.

8 THE COURT: Let me ask a few question, and counsel
9 can follow-up if need be.

10 When I read the Pretrial Services Report, it stated
11 that your wife, Beatrice Ottomanelli, indicated she is unable
12 to serve as a third-party custodian because she has plans to
13 move back to Melbourne with your son. Does your wife still
14 live in Albuquerque, or where does she reside now?

15 THE DEFENDANT: No, sir, she left four days after I
16 was arrested federally, and she is in Melbourne, Florida, with
17 her parents.

18 THE COURT: The report from Ms. Day, who is
19 participating in this hearing, dated yesterday, says that the
20 Defendant did not contact the Pretrial Services Office to give
21 any new information or request the vetting of a potential
22 third-party custodian, and then they conclude that without any
23 new information, there does not appear to be any combination of
24 conditions that will reasonably assure the appearance of the
25 Defendant at court, or ensure the safety of the community. Do

1 you have in mind a custodian who would be responsible for you
2 if you were to be released?

3 THE DEFENDANT: Sir, I've got several candidates,
4 people that I would think -- people that I've served with in
5 the past. I can't contact them, because I don't have their
6 phone numbers, so I've entrusted my wife with that. I talked
7 with her yesterday. She was supposed to get in contact with
8 those four individuals, and I have not contacted her past that
9 point to find out if that was --

10 THE COURT: Are those four individuals people who
11 reside in Albuquerque?

12 THE DEFENDANT: Yes, sir. They all reside either on
13 the installation or off the installation, but all within
14 Albuquerque, yes, sir.

15 THE COURT: All right. Counsel, go ahead.

16 MR. ROMERO: Your Honor, if I may, just one quick
17 follow-up on the Court's question.

18 THE COURT: Go ahead.

19 MR. ROMERO: Your Honor, my understanding, and one of
20 the reasons I know Mr. Justice has been in regular contact with
21 his wife -- and we advised her not to get on a plane to come
22 here because of the virus, and they have the one-year-old
23 child. But according to Captain Saulter, and he could address
24 this, he has the pending military justice proceeding, and one
25 of the conditions, if he were to be released here, would be

1 that he would likely be returned to base.

2 He was basically -- he has already reached his, I
3 think they call it an EPS, his termination of his service
4 contract, and he has been held back by the military in order
5 for them to finalize and process the UCMJ case that is pending
6 against him at the same time or concurrent with this case. And
7 according to Captain Saulter, what would happen, or he believes
8 would happen -- and he could address the Court more
9 specifically -- is he would be returned to base in a dorm
10 facility there, because he, as a result of being retained by
11 the military for processing of the UCMJ action that's pending,
12 they basically own him, in terms of being required to provide
13 for him and have a room and board for him, Your Honor.

14 THE COURT: who would be his custodian in the
15 dormitory circumstance?

16 MR. ROMERO: Your Honor, I think that would all be a
17 function of the chain of command in terms of putting conditions
18 in place. But if I may, if I could have Captain Saulter
19 address that as the SME, or the Subject Matter Expert with
20 regard to that issue.

21 THE COURT: Sure, that's fine.

22 MR. MOTE: Your Honor, I would object to this
23 individual providing testimony without being subject to
24 cross-examination. If he's going to testify about the
25 conditions under which the accused would be placed if he landed

1 back in military custody, Your Honor, then I would request an
2 opportunity to cross-examine him on his opinions on that.

3 THE COURT: Sure, you will be.

4 MR. ROMERO: And we have no objection, Your Honor.
5 Captain Saulter got express permission from his chain of
6 command to testify at this proceeding as a witness if
7 necessary, Your Honor.

8 THE COURT: Let's go ahead and finish with
9 Mr. Justice's testimony. Go ahead.

10 MR. MOTE: Thank you, Your Honor.

11 RE CROSS-EXAMINATION

12 BY MR. MOTE:

13 Q. Just briefly, have you been disciplined since you've been
14 in jail? Have you been disciplined by the jail for getting a
15 tattoo?

16 A. No, sir.

17 Q. You testified on redirect with your defense counsel that
18 you had never discussed sympathies with any white nationalist
19 or racist movement; is that correct?

20 A. Yes, sir.

21 Q. Is it your testimony under oath today that you have never
22 communicated with a person using the Instagram name Free Rope
23 Rides?

24 A. I don't know who that person is, sir. Evidently there's
25 multiple pages, because I've seen the headlines, so I don't

1 know which one you're referring to. There's a multitude of
2 pages. You're indicating there's a Free Rope Rides 3. I've
3 seen that indicated in the photos. I don't know, but in that
4 case there's probably a 1 and a 2 somewhere.

5 Q. Okay, hold on.

6 MR. MOTE: Your Honor, if I may have a moment.

7 BY MR. MOTE:

8 Q. And under oath today, have you ever communicated with
9 anyone that has Free Rope Rides in the Instagram profile title?

10 A. Communicate as in how, sir? Liking a post? Commenting on
11 a post? Interactions?

12 Q. Let's walk through those one by one. One, have you ever
13 liked any of their posts?

14 A. To be honest, I don't know. I don't know.

15 Q. Two, have you ever screen-shotted any of their posts?

16 A. Again, I don't know. It's been so long since I've had a
17 phone, so I don't remember.

18 Q. Three, have you ever sent any messages via Instagram or
19 Facebook to someone with that profile name?

20 A. It's possible I did, possibly not. I don't remember,
21 honestly. I do not recall.

22 Q. Okay.

23 MR. MOTE: No further questions. Thank you, Your
24 Honor.

25 THE COURT: Mr. Romero, do you have any further

1 questions?

2 MR. ROMERO: No, Your Honor, I don't.

3 THE COURT: Okay. Thank you, Mr. Justice, you may
4 have a seat back at the table.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay, Mr. Romero, call your next witness.

7 MR. ROMERO: Captain Saulter.

8 THE COURT: Please come forward and be sworn as a
9 witness.

10 THE WITNESS: Thank you, Your Honor.

11 (ROBERT W. SAULTER, DEFENSE WITNESS, AFFIRMED)

12 DIRECT EXAMINATION

13 BY MR. ROMERO:

14 Q. Captain Saulter, just for the record, please if you could
15 state your full name and your title and where you're assigned.

16 A. Yes. My name is Robert, W. is my middle initial, Saulter.
17 Sierra Alpha Uniform Lima Tango Echo Romeo. I'm a captain in
18 the United States Air Force. I'm stationed at Kirtland Air
19 Force Base as the Area Defense Counsel.

20 Q. And in that capacity, when did you meet Charles Brent
21 Justice?

22 A. Roughly around the time of his arrest in February.

23 Q. Okay. And if you could, briefly summarize those initial
24 charges, or I think in the military they're called
25 specifications.

1 A. There are both charges and specifications. So in the
2 military system when you have a federal crime, a federal
3 civilian crime that's not particularly outlined in the Uniform
4 Code of Military Justice, it can be captured under Article 134
5 of the UCMJ and assimilated essentially under that provision.
6 And at the pretrial confinement hearing, the silencer at issue,
7 the silencer allegation, anyway, was one of the charges that
8 were examined by the Pretrial Confinement Review Officer.

9 Q. So they assimilated the Title 18 offense for which he is
10 here today?

11 A. Yes. And under the military system, you don't have to be
12 formally charged to be at a pretrial confinement hearing. So
13 essentially, it's a rough estimation of the charges. They read
14 it out. But the actual referral of charges, which is what in
15 your system you would consider the indictment or criminal
16 complaint, that doesn't come until potentially later.

17 So at that time, they did reference those charges. It was
18 part of what was in front of the hearing. But he wasn't
19 formally charged with anything until much later.

20 Q. Okay. And you represented the Defendant at his pretrial
21 confinement hearing?

22 A. Yes, I did.

23 Q. You sat here and listened to his recitation of the
24 findings made by the commander. I believe it was Colonel
25 Carlson; is that right?

1 A. Yes, sir, it was Colonel Carlson, who I believe is the
2 377th Maintenance Group Commander, MXG. He has been appointed
3 by the base, the wing Commander, Colonel Miller, to be the
4 Pretrial Confinement Review Officer. Not specifically for
5 Airman Justice's case, but for all cases where someone might be
6 placed in a pretrial confinement.

7 Q. And after hearing all the evidence adduced by the command
8 in support of their request for continued detention,
9 Colonel Carlson found that he should be released, the
10 Defendant?

11 A. Summarily from the bench.

12 Q. Okay. And just briefly, since we have you here, was the
13 command upset about that?

14 A. Yes.

15 Q. And how do you know that?

16 A. I talked to them right after the hearing. Both the
17 Lt. Colonel Commander and the First Sergeant had testified, as
18 well as several OSI agents, in hopes of having Senior Airman
19 Justice retained in pretrial confinement.

20 Q. And I'm asking you under oath, in your opinion, did the
21 witnesses on behalf of the command testify inaccurately or
22 falsely with regard to their attempt to keep Defendant Justice
23 detained?

24 A. If I could ask you just to repeat that one more time.

25 Q. Well, there was a reference to wish.com; is that correct?

1 A. Yes.

2 Q. Tell the Court about that.

3 A. So, part of what was at issue at the pretrial confinement
4 hearing was the search of Airman Justice's house, and pursuant
5 to that search, there was an affidavit for probable cause.
6 They wanted to search his house and every little nook and
7 cranny, so they said in the affidavit that there was some
8 evidence that he was using the dark web and cryptocurrency to
9 import things from China.

10 At the pretrial confinement hearing, the agent that
11 testified regarding that confirmed that they were aware of
12 wish.com, and that wish.com is an American website and that it
13 is not part of the dark web.

14 Q. Just to clarify, in the affidavit they indicated that he
15 was utilizing a dark website and cryptocurrency in support of
16 the search warrant?

17 A. Correct.

18 Q. And it turned out that wish.com was the website at issue,
19 and it is not a dark website, correct?

20 A. Correct. Like many American-based websites, they fulfill
21 orders with parts from China and other countries, but it is in
22 no means a website like Silk Road or other dark websites where
23 you can purchase illicit materials. I'm sure you can purchase
24 something illegal on Amazon, but it doesn't make it a dark
25 website.

1 Q. And then with reference to the search, itself, was there
2 an issue that came up during the hearing that you testified at
3 regarding the proximity of the lawfully owned or purchased
4 firearms to toys?

5 A. Yes. So at the hearing, one of the agents that testified
6 was shown several photos of firearms next to plastic children's
7 toys, and there was an illusion made that that's where those
8 firearms were kept and that the child was somehow in danger.
9 On cross-examination, the agent admitted that he had placed
10 those firearms next to the plastic toys to make them look
11 worse.

12 MR. STANFORD: Your Honor, we are fairly far afield
13 of danger to the community and flight risk at this point.

14 MR. ROMERO: I'll move on, Your Honor.

15 MR. STANFORD: I'm confused as to what we're talking
16 about.

17 THE COURT: Mr. Romero is going to something else, I
18 guess.

19 MR. ROMERO: I'll move on, Your Honor.

20 BY MR. ROMERO:

21 Q. I believe once you secured, after the hearing,
22 Mr. Justice's release, is it your understanding based on your
23 contact and communication with him that he was in full
24 compliance with those conditions of release?

25 A. One hundred percent.

1 Q. And he stayed in contact with you?

2 A. Yes. without revealing any client confidential
3 communication, we prepared for his case. I communicated with
4 both him and his wife about the pending CYFD issues that had
5 been brought. I helped him prepare for the expiration of the
6 term of his service. so there was plenty of coordination going
7 on between us, as well as the fact that his wife was
8 considering going to Florida because of the expiration of his
9 term of service.

10 Q. Should the Court in this case fashion conditions of
11 release for the Defendant, what would that possibly or likely
12 entail with regard to what would occur to him in the pending
13 military case?

14 A. So, he's still pending military charges. There was a
15 preliminary hearing a couple of weeks ago that concluded.
16 There's currently a probable cause determination that's yet to
17 be found. That should be coming this Friday. But assuming
18 that the Government chooses to go forward with those charges,
19 they would put him on an administrative hold that would
20 indefinitely extend his enlistment in the military, and then he
21 would be moved back to Kirtland Air Force Base.

22 Several of his friends testified at the pretrial
23 confinement hearing, and I'm certain one of them would likely
24 allow him to live in their house, or else he would be given a
25 dorm room, would be my next guess. I have several clients

1 under these kind of circumstances, not because they're being
2 restricted to the dorms, but they are offered the opportunity
3 to utilize the dorms if they give up their BAH, which he's
4 currently not getting paid at all.

5 Q. And if he were to leave at any time from the base, or
6 return in an unauthorized manner, would that, given the
7 security posture of the base, would that be something that
8 would be able to be documented or verified?

9 A. Absolutely. Again, I have roughly 300 clients on the base
10 facing a variety of charges, plus another 20 or 30 bases across
11 the Air Force. Essentially -- I even have one client that's
12 coded as a deserter. But they will find you wherever you go.
13 When I was a prosecutor, somebody tried to go to Canada and
14 seek asylum, which didn't work out too well.

15 But, yes, they will find you anywhere in the world that
16 you go, and it will be noticed. He does have to report to work
17 every single day and will be maintaining accountability, just
18 like any other member, and probably even more so. As a lot of
19 my clients are pending charges, the unit is very active in
20 making sure they have accountability on those members.

21 Q. So finally, as a military member, somebody who has been
22 put on administrative hold and retained in the military pending
23 the final processing of the UCMJ proceeding, he would be
24 required to work, report to work, stay likely at a base dorm or
25 base housing, and accountability would be verified through that

1 process; is that fair?

2 A. Yes, just like all of my other clients, yes.

3 MR. ROMERO: Pass the witness.

4 THE COURT: Let me ask another question. What if
5 Mr. Justice is convicted of the military charges? What happens
6 then?

7 THE WITNESS: Just because he's convicted -- the
8 charges that he's facing do have a potential for a punitive
9 discharge, but I wouldn't say that they -- they do not have --
10 we don't have minimums. Most of my clients do not receive
11 punitive discharges, which typically means that they serve any
12 confinement time they might have, they go back to their unit,
13 they in-process, and then either they're administratively
14 discharged, or in this case because Airman Justice has already
15 reached his EPS, he would essentially be out of the military
16 once those charges are resolved.

17 But I have cases where military members are held two
18 or three years for their court-martial on administrative holds.
19 They can extend them as long as they want.

20 THE COURT: Well, if he's convicted of the military
21 charges, what is the maximum punishment?

22 THE WITNESS: Depends on the forum. Currently the
23 preliminary hearing officer, which is a neutral JAG that
24 presided over the hearing a few days ago, can recommend a
25 forum. The charges that Airman Justice are facing, since the

1 silencer NFA charges were removed, are charges that I think
2 it's very possible will be a recommendation for a special
3 court-martial, which is essentially a misdemeanor level offense
4 with a one-year maximum.

5 I think if you actually add up the maximum
6 punishments, if it's at a general court-martial -- I don't want
7 to speak too far out of turn, but the violation of an order, I
8 believe that you have three months or six, and then the stolen
9 property ones are a couple of years, depending on how that
10 plays out, because it's military property. But that's at
11 issue, as well. I think there's a good chance that at least
12 one of those charges will be found to not have probable cause
13 when the report drops on Friday.

14 THE COURT: Go ahead.

15 MR. MOTE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MOTE:

18 Q. Captain Saulter, good afternoon. How do you pronounce
19 your last name?

20 A. Saulter, like pepper.

21 Q. Okay. I just wanted to make sure I was doing that
22 correctly.

23 Captain Saulter, just before we go any further, you
24 testified a minute ago that the maximum punishment for an
25 violation, the order violation, is three or six months. Is

1 there anything that could help you be a little more sure about
2 your answer on that? would viewing the maximum punishments
3 table in the UCMJ help you with that?

4 A. Depends on if that's the 2016 or the 2019 version.

5 Q. This is the 2019 version.

6 A. That would be helpful.

7 Q. Okay.

8 MR. MOTE: Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 MR. MOTE: All right.

11 THE WITNESS: I rarely see these in courts-martial.

12 MR. MOTE: Just for the Court's record, I have handed
13 the witness a copy of the 2019 UCMJ, which includes a max
14 punishment table there.

15 THE WITNESS: So I see here where you underlined two
16 years, but that's for a general order regulation. I want to
17 say that he's charged with failure to obey a lawful order,
18 which is six months. I could be wrong on that, though. I
19 haven't looked at his charge sheet. I work with too many
20 clients.

21 MR. MOTE: Okay. May I approach the witness to
22 retrieve?

23 THE COURT: You may.

24 BY MR. MOTE:

25 Q. Captain Saulter, you talked a lot about the possibilities,

1 and the possibilities of what would occur to Mr. Justice if he
2 is released from confinement and returned to military control.
3 If he is returned to military control, would you agree with me
4 that he would be the responsibility of the commanding officer
5 of his unit and/or the base?

6 A. Correct, unless he goes to confinement. Then he's owned
7 by the Air Force Security Forces Center.

8 Q. Okay. But that's a totally different determination. If
9 this Court releases him, he would go back to the control of the
10 commanding officer of his unit or the commanding officer of his
11 base, correct?

12 A. Correct.

13 Q. And have you spoken with the commanding officer that would
14 be in charge of him if he were to be released today about his
15 willingness to serve as a third-party custodian?

16 A. I would not have asked his commander that question, as a
17 third-party custodian, given that there were other potential
18 options.

19 Q. Okay. And it's fair to say that if Senior Airman Justice,
20 let's say, is released back to military control and he were to
21 go out and do something, that the responsibility of him,
22 though, would fall onto the commander of his unit or the base,
23 correct?

24 A. I think everyone in his chain of command, yes.

25 Q. Okay, thank you. So he has not been made aware of your

1 request to release him back to military control, the commanding
2 officer?

3 A. He has many times over. I have submitted probably 50
4 requests to have the prosecutions here that are concurrent be
5 brought together so that he would be either released from the
6 military or released out of detention.

7 Q. Right, but that wasn't the question I asked, Captain
8 Saulter. It was, is he aware that you are here today asking
9 the Court to release him back to military control?

10 A. Not here today, but generally, yes. I have talked to him
11 specifically about releasing him to military control.

12 Q. Okay. And there are things within the UCMJ, methods of
13 pretrial restriction, right?

14 A. Correct.

15 Q. Different ones, and that's what is Article -- what is it?
16 R.C.M. 304?

17 A. Yes. That's pretrial restraint, generally.

18 Q. Pretrial restraint. But that determination has to be made
19 by the commanding officer, correct?

20 A. A commanding officer, not necessarily the -- but, yes, a
21 commanding officer.

22 Q. So if the Court were to release him today, it's up to the
23 commanding officer to determine what level of restriction he
24 places on Senior Airman Justice, correct?

25 A. To his chain of command, yes.

1 Q. Okay, thank you. And in that same vein, when we're
2 talking about pretrial restrictions, usually that requires a
3 military member to have constant supervision. Is that fair to
4 say?

5 A. Not necessarily. So sometimes, like with Airman Justice,
6 you go to an alternate duty location, or I've had clients that
7 had to do once-a-day text ins, and I've also had clients that
8 are restricted to base, but they're not required to check in
9 with anyone.

10 Q. So differing levels of control when you talk about some
11 semblance of pretrial restriction, there are different levels
12 of control?

13 A. There can be.

14 Q. Okay. Now, anybody that's been on a military base knows
15 that when you go on the military base, usually you have to show
16 an ID to get onto the base, correct?

17 A. Correct.

18 Q. Do you have to do any of that when you leave?

19 A. No.

20 Q. Okay. Now, Captain Saulter, you testified that you're
21 the -- is it the Area Defense Counsel?

22 A. Yes. I've actually been kind of in limbo right now.
23 Because of the COVID stuff, I'm supposed to be a Circuit
24 Defense Counsel, which is a supervisory position for that.
25 But, yes, right now I am currently the Area Defense Counsel for

1 Kirtland Air Force Base.

2 Q. So that means you're -- now, if I say this wrong, correct
3 me. You're qualified and certified under Article 27 Bravo of
4 the UCMJ, and sworn under 42 Alpha as a Judge Advocate; is that
5 correct?

6 A. That is correct.

7 Q. And to get that certification, you went to an 11-week
8 training, correct?

9 A. As well as -- it used to be that you got the certification
10 out of that 11-week training, but that is not the case any
11 longer. When I went through, you had to get recommended by
12 your Staff Judge Advocate as well as a couple of military
13 judges. So that happened for me when I was at Minot Air Force
14 Base.

15 Q. Great. And so currently, the closest analogy is you're
16 Senior Airman Justice's defense counsel; is that correct?

17 A. Yes. I represent him for military justice matters.

18 Q. And as his defense counsel, you have a duty to zealously
19 advocate on his behalf?

20 A. Yes, I do.

21 Q. Both in and outside of the military courtroom?

22 A. Theoretically, yes.

23 Q. Okay. And your tag line on your emails is, "Better call
24 Saulter," correct?

25 A. Yes.

1 Q. Is that a reference to an unscrupulous defense attorney in
2 a popular television TV show?

3 A. It's a reference to a television show that's based in
4 Albuquerque. As a criminal defense lawyer, I was placed by the
5 Air Force in Albuquerque, New Mexico, so yes, it's a play on
6 that terminology.

7 Q. Okay. And as you're zealously representing the client,
8 again, that zealous advocacy extends both in and outside the
9 military courtroom?

10 A. I zealously represent my clients to the maximum extent
11 that I am allowed under both my Texas State Bar rules as well
12 as the Air Force Uniform Rules of Practice.

13 Q. Okay. And as you testified today, you are his detailed
14 defense counsel?

15 A. I am his detailed defense counsel, as well as
16 Lt. Colonel Nicholas McCue, who is the Chief Circuit Defense
17 Counsel for the Western Circuit, Travis Air Force Base in
18 California.

19 MR. MOTE: No further questions, Your Honor.

20 THE COURT: Mr. Romero, anything else?

21 REDIRECT EXAMINATION

22 BY MR. ROMERO:

23 Q. Captain Saulter, in this case or any other case, have you
24 ever found to be unscrupulous?

25 A. No.

1 MR. ROMERO: Thank you.

2 THE COURT: Thank you, Captain Saulter. You may have
3 a seat back at the table.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Does the defense have any other
6 witnesses?

7 MR. ROMERO: No, Your Honor.

8 THE COURT: And what about the Government?

9 MR. STANFORD: Your Honor, I've got to re-call
10 Sorenson. I'm sorry, Your Honor. There's some things that
11 were touched on that need to be clarified.

12 THE COURT: All right. Please ask him to come
13 forward.

14 MR. STANFORD: The United States calls Special Agent
15 Nathaniel Sorenson.

16 THE COURT: Please raise your right hand and be sworn
17 as a witness.

18 (NATHANIEL SORENSON, GOVERNMENT WITNESS, SWORN)

19 DIRECT EXAMINATION

20 BY MR. STANFORD:

21 Q. Will you tell me about your job at the Air Force for the
22 Court's edification?

23 A. Yes, sir. I'm a Special Agent with the Office of Special
24 Investigations, Kirtland Air Force Base, New Mexico.

25 Q. And what disciplines does the Office of Special

1 Investigations oversee as a part of their investigations?

2 A. We conduct felony level criminal investigations as well as
3 counterintelligence and force protection operations.

4 Q. A moment ago, it was raised in testimony that Airman
5 Justice did not receive any unusual training in his capacity, I
6 think they called it the wing on Kirtland Air Force Base. Do
7 you recall that?

8 A. I believe I know what you're speaking of, sir, yes.

9 Q. Are you aware of some specialized training that Airman
10 Justice has received as a member of the Security Forces
11 squadron?

12 A. Yes.

13 Q. Can you describe that training for the Court?

14 A. So, Security Forces members start their military life, if
15 you will, the same as most members -- most enlisted members,
16 that is, and go into basic military training. During basic
17 military training is where every military member is trained on
18 the use of the M16, at the time I went through. Maybe it is
19 the M4 now. But it is a rifle platform.

20 Upon graduation of basic military training, they go to a
21 technical school, and in Airman Justice's case, that would have
22 been a Security Forces technical school. So only Security
23 Forces members go to that, not every Air Force member. And
24 throughout that tech school, they fire every weapon which he
25 did describe; the 249 belt fed machine gun, the 240 belt fed

1 machine gun, the M16, the M4, the M9 handgun. And that is
2 specific to their training.

3 As well, when they get to their first duty station, they
4 do ongoing yearly qualifications on those firearms. Maybe not
5 all of them, but a specified amount of them. At least the M4
6 rifle and the M9 pistol. And other members get qualified on
7 the more special weapons systems, such as the belt fed machine
8 guns. So not every member does that.

9 And as well, I don't recall if it's on a quarterly basis
10 or a biannual basis, but Security Forces members specifically
11 go through what's called a force-on-force training. What that
12 is, is a simunition training where they use training and ammo
13 that usually commonly shoots some sort of a paintball or some
14 less than lethal way to train where they actually engage
15 oppositional forces for a training environment. And that is
16 specific to Special Forces members, Security Forces members, as
17 well as OSI agents, and not every Air Force member receives
18 that type of training.

19 Q. That's highly specialized training?

20 A. It is specialized.

21 Q. Is it within the scope of his duties to research active
22 shooters?

23 A. It is not.

24 Q. Is it within the scope of his duties to research how to
25 make improvised explosive devices?

1 A. It is not.

2 Q. Does he, in fact, receive Air Force training on how to
3 recognize and handle improvised explosive devices and other
4 bombs?

5 A. Yes, sir. On a biennial basis, so every other year,
6 airmen go to a training where they're trained on identifying
7 what's called a UXO, which is an unidentified explosive device
8 or something of that nature, as well as they're usually shown a
9 slide-show, from my recollection the last time I did it, and it
10 shows different types of IEDs which have been found in overseas
11 environments, to show airmen the types of signs they need to be
12 looking for.

13 And as well, on a biennial basis, just before going to
14 this training, airmen are required to take a cyber-based
15 training which covers a lot of the same matter, and at the end
16 of that training there's also a test to ensure that they
17 retained that knowledge.

18 Q. So it may be presumed that he's familiar with improvised
19 explosive devices?

20 A. I would say so, yes, sir.

21 Q. There was also a mention that he had -- I confused myself.
22 He said he had screen shots that he downloaded to his phone,
23 and he said he had materials that he may or may not have
24 downloaded to his phone. Did you look at the materials on his
25 phone?

1 A. I did, sir.

2 Q. And can you tell the Court, were those things that could
3 have accidentally been saved to his phone?

4 A. Sir, to my experience, and I am not a digital forensics
5 expert, but in my experience using a cell phone --

6 MR. ROMERO: Objection, Your Honor.

7 THE COURT: You're saying he's not an expert?

8 MR. ROMERO: Correct, Your Honor.

9 MR. STANFORD: He's not testifying as an expert, Your
10 Honor.

11 THE COURT: Let him go ahead and say what he
12 personally knows.

13 MR. STANFORD: Thank you.

14 A. My personal knowledge of using a cell phone, I've never
15 once had a photograph accidentally or some other way saved to my
16 phone. It's always been a choice by myself.

17 Q. Do you own a cell phone?

18 A. I do.

19 Q. Have you taken a screen shot?

20 A. I have.

21 Q. Does it require some intentional input by you to take a
22 screen shot?

23 A. It takes an affirmative action.

24 Q. Thank you. Did you personally review what has been called
25 the bug out list found on his phone?

1 A. I did.

2 Q. What was it called on his phone?

3 A. The title of it was The SHTF Checklist.

4 Q. Have you encountered those initials regarding a similar
5 list in your training and experience?

6 A. Not to my recollection.

7 Q. Okay. Do you know what those initials stand for?

8 A. I'm guessing Stuff Hit The Fan, or some other profane
9 version.

10 Q. It's okay to say it. Shit Hits The Fan.

11 A. Yes, sir.

12 Q. Have you heard that term before?

13 A. I have.

14 Q. Where have you heard that term before?

15 A. Through conversations, sir. I can't recall a specific
16 time that I've actually heard that.

17 Q. Okay. Did you find the list to be consistent with what
18 you might expect to find an airman to have? Do most airmen
19 have bug out or Shit Hits The Fan lists like that?

20 MR. ROMERO: Objection, Your Honor. Leading.

21 MR. STANFORD: I'll ask it again.

22 THE COURT: All right, try it again.

23 BY MR. STANFORD:

24 Q. In your experience, do most airmen have that kind of a
25 list that they carry around with them?

1 A. I've reviewed multiple cell phones of airmen, and I've
2 never found a list of that sort.

3 Q. Are airmen that live on base required to abide by firearm
4 storage regulations?

5 A. They are.

6 Q. Is one of those regulations that they have to sign an
7 acknowledgment that if you live on base, you must register
8 firearms?

9 A. More or less, sir, yes. There's an installation policy
10 that if you are going to live in the on-base residences, there
11 is a form that you need to fill out putting the make, model and
12 serial number of the firearms that you intend to store within
13 that home, and also gain the approval of your chain of command
14 to do so. And then that form needs to get filed with the
15 Security Forces Armory.

16 Q. And was Airman Justice made aware of that requirement?

17 A. He was.

18 Q. Is it particularly difficult to gain permission to store
19 firearms in your base residence?

20 A. It's not, sir. It's a very simple process. Like I said,
21 it's just a general form you fill out. You put the make, model
22 and serial number, you take it to your chain of command and
23 gain their approval, and then generally you don't even have to
24 take it down in person, you can just email the form. Sometimes
25 the Armory wants to verify the serial numbers, but it kind of

1 depends on who is running that program at that time.

2 Q. So it sounds like they're pretty much approved out of
3 hand.

4 A. More or less, sir. Generally military members are
5 trustworthy enough to keep firearms in their home.

6 Q. How many firearms were found in Airman Justice's home?

7 A. Approximately 17, sir.

8 Q. Were any of them registered?

9 A. No, sir.

10 Q. There has been testimony about the military hearing that
11 resulted in Airman Justice being released. Are you aware of
12 that hearing?

13 A. I am.

14 Q. Were you, in fact, present for it?

15 A. I was.

16 Q. And you were the one who found the materials on his phone,
17 correct?

18 A. I was, sir.

19 Q. On the day of the hearing, when the witness testified on
20 his behalf, had the materials on his phone been discovered yet?

21 A. They had not, sir.

22 Q. So was anyone who testified at the hearing aware of the
23 materials on his phone?

24 A. I assume that would have only been Senior Airman Justice,
25 sir.

1 Q. And was the hearing officer made aware of the materials on
2 his phone when he approved Airman Justice's release?

3 A. I do not believe he was.

4 Q. So the conditions of release would then have been set
5 without the benefit of that knowledge, correct?

6 A. That's correct.

7 Q. Do you happen to know the date of his mental health
8 evaluation?

9 A. I do not recall the specific date, sir.

10 MR. STANFORD: That's all I have, Your Honor.

11 THE COURT: Mr. Romero.

12 MR. ROMERO: May I have a moment, Your Honor?

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. ROMERO:

16 Q. Agent Sorenson, with regard to the alleged failure of
17 Mr. Justice to register his weapons with the installation, he
18 has not been found guilty of that offense; isn't that correct?

19 A. Not as of yet.

20 Q. And you indicated, I believe, that this was a downloadable
21 installation defense -- what did you call it?

22 A. Sir, I don't recall stating that it was downloadable.

23 Maybe I did. But it was a form that is given to the members
24 when they seek being able to store these weapons. And I think
25 every squadron or unit is probably different in whether a First

1 Sergeant or some supervisor has it on hand, or whether they
2 contact the Armory to receive it.

3 Q. Agent Sorenson, you have no evidence that Mr. Justice was
4 ever provided the form, that he ever acknowledged the existence
5 of the policy, and in fact, it's a For Official Use Only
6 policy, which would not be something that he would be able to
7 download at all; isn't that correct?

8 A. I would have to answer your question in a couple of
9 different parts, sir. Can you, if possible -- you asked me a
10 few different questions. Would it be possible to ask those one
11 at a time?

12 Q. Well, you have no proof through a sign-in sheet of him
13 receiving a briefing with regard to this policy, do you?

14 A. I do not have a sign-in sheet wherein he acknowledged
15 this.

16 Q. That's common when you're being briefed on policies that
17 are subject to UCMJ prosecution or administrative disciplinary
18 action, that you have to have an acknowledgment from the airman
19 or soldier in order to prove notice, in order to then prosecute
20 that soldier or airman; isn't that correct?

21 A. Well, sir, when he agreed to live on Kirtland Air Force
22 Base, he signed a lease agreement, as is common when you're
23 going to take a rental property. In that lease agreement, it
24 is specified that if you are going to be storing firearms in
25 your on-base residence, you need to register them with the

1 Armory, or something to that nature, to which he initialed next
2 to it at the time of his moving in. So I would say we do have
3 proof of that, sir.

4 Q. Of the registration requirement?

5 A. Absolutely, sir.

6 Q. He has not been convicted of that offense?

7 A. Not as of yet.

8 Q. Okay. And do you have that lease with you?

9 A. I do not.

10 Q. How long have you been an agent?

11 A. Since November of 2018.

12 Q. So how many actual phones have you exacted as part of your
13 time as an agent with OSI?

14 A. To my recollection, sir, what I can recall right now, it
15 would be seven.

16 Q. And you indicated with regard to Mr. Justice's specialized
17 firearms training that he received firearms training that is
18 beyond what your basic trainee receives and it is equivalent
19 with what Special Forces or OSI forces receive. Is that a fair
20 characterization?

21 A. It is not, sir. No, I did not say it was equal or
22 equivalent, I just stated that the type of training that I
23 specified during the answering of that question is limited to
24 those three or four career fields that I mentioned. But I did
25 not say they are equal.

1 Q. well, in any event, the OSI career field is one of the
2 largest career fields in the Air Force, is it not?

3 A. It's actually one of the smallest, sir. That's definitely
4 not the truth.

5 Q. How many thousands of OSI personnel, or technically
6 trained personnel are there in the Air Force?

7 A. Last count I recall, sir, was just under 2500.

8 Q. And does that include Mr. Justice's career field, it falls
9 under the OSI umbrella?

10 A. No, sir, it does not.

11 Q. How many are those, approximately?

12 A. I would guess in the tens of thousands, but I don't know
13 for sure.

14 Q. Okay. So he is one of tens of thousands of similarly
15 trained airmen?

16 A. That's accurate.

17 Q. Okay. Now, you testified at the pretrial confinement
18 hearing; is that correct?

19 A. Yes, sir.

20 Q. Okay. And did you testify, or did you include in the
21 affidavit in support of the search warrant that the wish.com
22 website was a dark website?

23 A. No, sir, that was not listed in our affidavit. We did not
24 say that wish.com was a dark website in that affidavit.

25 Q. well, where did you --

1 A. I also assume we're speaking of the military pretrial
2 confinement hearing?

3 Q. Yes.

4 A. Because this is the third one I've testified in. So, just
5 clarifying.

6 Q. Did you or anybody representing OSI in the course of your
7 investigation of Mr. Justice refer to wish.com as a dark
8 website in support of the investigation or charges brought
9 against Mr. Justice?

10 A. Nowhere in the affidavit did we state that wish.com,
11 itself, is a dark website.

12 Q. What did you state? You used the term dark website?

13 A. I'm not sure what your question is. Is the term dark web
14 in the affidavit?

15 Q. Yes.

16 A. I believe it's mentioned.

17 Q. Okay.

18 A. But at no point was it the basis of our search. It was
19 just stating that when people commonly order illegal silencers
20 from overseas, dark web is one of the avenues that they may
21 commonly use. So it was referenced as that, as a reference.
22 But it was not the basis for our search, and it was not what we
23 based our probable cause off of.

24 Q. It did not apply in this case, correct? There was no dark
25 website involved?

1 A. We did not find any evidence that Charles Justice was
2 ordering things --

3 Q. Nor was there any cryptocurrency?

4 A. Yeah, also on that, cryptocurrency is referenced with the
5 dark web in the affidavit, but at no point was it the basis of
6 our search or the basis of our probable cause. It was
7 referenced through our collaboration with HSI and AFT and what
8 they have experienced in their law enforcement training. At no
9 point was that the basis of our search, but I do believe it was
10 mentioned at some point in the affidavit, as some sort of a
11 reference.

12 Q. You just threw it in there?

13 A. I didn't throw it in there. I didn't even draft the
14 affidavit.

15 MR. STANFORD: Your Honor, the runner is well outside
16 of the baseline here. Those terms are exciting terms, dark web
17 and cryptocurrency. They in no way relate to the United
18 States' prosecution, and they do not bear on his dangerousness
19 or flight risk. It's just nothing to do with this, Your Honor.

20 MR. ROMERO: I'll move on, Your Honor.

21 THE COURT: Let me ask first, Mr. Stanford, what is
22 your strongest case with respect to dangerousness?

23 MR. STANFORD: Are you asking me to make my closing?

24 THE COURT: Yes, I'd like to hear it now before we
25 continue, unless I'm going to hear some testimony about it.

1 You don't have to go into any detail, just one, two, three,
2 four, what are your strongest points.

3 MR. STANFORD: That's not how I've organized my
4 presentation, Your Honor. Really, this has all been covered
5 below where the Magistrate found that he was dangerous and a
6 flight risk, and the United States Probation Office has twice
7 found the same thing.

8 THE COURT: We're about to hear from Sandra Day, the
9 Probation Officer, after the testimony is completed, but I just
10 want a general picture of what you think makes Mr. Justice a
11 danger to the community.

12 MR. STANFORD: Well, this is -- so I am, or I am not
13 making my closing now?

14 THE COURT: Just give me the major points. You don't
15 have to elaborate.

16 MR. STANFORD: This is a guy with combat and tactics
17 and weapons training, trained by the military, funded by the
18 taxpayers, who took it upon himself to amass quite a cache of
19 weapons and ammunition, 17 firearms and 7000 rounds of
20 ammunition, along with body armor, along with gas masks, along
21 with military headsets that have been identified as stolen,
22 that he was selling on eBay. So there's that. By itself,
23 that's a crime for the military courts, probably.

24 But he also ordered silencers, which he knows to be
25 illegal. He knows they're silencers because of his specialized

1 training. He doesn't think a silencer is anything other than a
2 silencer, just like you and I look at a gavel and based on our
3 training and experience, we know it's a gavel. You can call it
4 a hammer, but we know it's a gavel. By the same token, he
5 knows what a silencer is. So he did that, a knowing violation
6 of military and United States law. Again, it looks like a
7 different prosecution if that's all we have.

8 But what else we discovered was blatant glorification
9 of mass shooters. Page after page of instructions on how
10 to construct an improvised explosive device. Not as
11 Mr. Justice suggests borderline racism, but blatant racism.
12 Anti-government, alt-right, you know, white supremacist style
13 propaganda. Those are free under the Constitution and he gets
14 to look at those things, but when you put those things in the
15 phone of somebody who has amassed a ton of weapons and ammo and
16 body armor and gas masks, who has specialized training in how
17 to use those, who has a Shit Hits The Fan list that describes
18 ways that he and his wife and his son can escape with body
19 armor, with munitions and with ammo, on the same phone where he
20 has his Last Will and Testament, well, we have quite a
21 different picture of somebody who was perhaps planning
22 something very dangerous.

23 You know, we see these things happen on TV, and it
24 seemed like it was weekly for a while, it's abated a little
25 bit, but we see these shooting events, and each of these

1 communities would give everything they had to have some advance
2 notice that something dangerous might be about to happen.
3 well, we have that advance notice. We don't know exactly what
4 his plan was, but we know that he's a man with the means and
5 the materials and the training to conduct something pretty
6 scary, and based on the shooter's manifesto and the other
7 glorifications of mass shooters and alt-right propaganda -- and
8 quite frankly, Your Honor, the United States calls B-S on his
9 assertion that he was just researching things in his
10 professional capacity. Special Agent Sorenson testified he's
11 got no business doing such research.

12 This guy was planning something. We don't know what,
13 but we have advance notice in this case, and that's why the
14 United States firmly believes that this person presents a
15 danger to the community. He has the technical training -- he's
16 been trained in combat, in evasion techniques, in enemy evasion
17 techniques. A halfway house? Please. Confined to quarters?
18 Please. It's all just too uncertain. And the community's
19 safety deserves better.

20 THE COURT: Let me explain my function, as I see it
21 at this point. I'm not the trier of fact. A jury is going to
22 make a decision about the guilt or innocence of the federal
23 charges that were brought against the Defendant. I'm required
24 at this stage of the proceeding, early on, to decide whether
25 there is any combination of factors that I could order that

1 would make sure that the Defendant, if he's released, would not
2 be a danger.

3 I gather he does no longer possess any of the weapons
4 or uniforms, or other things that you described. Is that
5 correct?

6 MR. STANFORD: We've seized them, but we also believe
7 him to be a very resourceful man who undoubtedly -- I mean,
8 morons on the street get AR-15s, Your Honor. This is a trained
9 weapons specialist. He knows how to get a weapon if he wants
10 one.

11 THE COURT: Well, if he's under the supervision of a
12 responsible person that sees him daily, are there not means of
13 fashioning --

14 MR. STANFORD: Definitely not. He's somebody who has
15 specialized training to escape those kinds of conditions, and
16 he is somebody that has shown a disregard for authority. The
17 reason I put that letter in there, the Letter of Counseling, is
18 because if you read through it, he's hitting a lot of the DSM
19 factors for a narcissistic personality, somebody who resents
20 authority.

21 You know, he stole the stuff from Cabelas, which he
22 dismisses as a foolish prank, but I think it's pretty serious
23 when you're an airman living in this community and you steal
24 from a gun store when you've got a gun store on base. He's got
25 everything he needs on base, and yet he fails to report his

1 weapons, which the witness has testified would be painfully
2 easy for him to get approved. He amasses 7000 rounds of
3 ammunition. I have 1000 rounds in my garage; 7000 is
4 significant. Plus body armor and gas masks. We don't know
5 what his plan was, that's the problem.

6 THE COURT: I understand your concerns, but is there
7 not some way that I could find a custodian who would see him on
8 a regular basis and be aware if he started deviating from
9 conditions of release by, for example, trying to buy a weapon
10 or buy ammunition?

11 MR. STANFORD: Given his specialized training, Your
12 Honor, and the propensity he's already shown to thumb his nose
13 at authority and regulations, I don't believe that anybody
14 could do that, except maybe a squad of Delta Force soldiers who
15 will surround him at all times. I don't believe such a
16 condition exists. I don't think we, as a community, can rest
17 safely knowing what we know about him and then giving a person
18 or persons who don't have the same motivation, who don't have
19 the same commitment to the United States Department of Justice
20 or this Court to keeping the community safe -- they simply
21 aren't going to have the same motivation that this Court would
22 or that my office would or that the United States Marshals
23 would.

24 THE COURT: Thank you for that explanation.

25 Now, Mr. Romero, go ahead and complete your

1 examination.

2 MR. ROMERO: I'll finish real quick, Your Honor.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. ROMERO:

5 BY MR. ROMERO:

6 Q. Did you acknowledge at the pretrial confinement hearing
7 that you had moved some of the children's toys in the house
8 next to the firearms that were located?

9 A. No, sir. I actually specifically testified to not doing
10 that. That was a mischaracterization by Captain Saulter.

11 Q. And again, there's been a reference to the Defendant
12 stealing Government property. That's also not been resolved,
13 has it?

14 A. That case is still pending, sir, yes.

15 Q. So it has not been resolved?

16 A. I don't believe so.

17 Q. He has not been found guilty, as we sit here today?

18 A. Guilty of?

19 Q. Of any of your charges that are pending against him in the
20 military proceeding.

21 A. Not as of yet.

22 Q. Okay. Thank you, sir.

23 THE COURT: Any other questions?

24 MR. ROMERO: No, Your Honor.

25 MR. STANFORD: Not from the Government, Your Honor.

1 THE COURT: All right. Thank you, sir. You may have
2 a seat out in the audience.

3 Any other witnesses by the Government?

4 MR. STANFORD: No other witnesses. I wanted to add
5 one last thing regarding conditions of release.

6 THE COURT: Go ahead.

7 MR. STANFORD: To put him in their care, given the
8 dangerousness he presents, it imposes quite a burden on the
9 military, which has a pretty serious job to do already, and I
10 think it's going to cause a lapse in their attention to the
11 duty they already have or a lapse in their attention to the
12 duty of caring for him, either of which is an untenable
13 prospect for the military and for us, as citizens of the
14 community. I simply don't think we can ask them to do that. I
15 think he's too dangerous, and they have other really important
16 things they're working on.

17 THE COURT: Okay, let me explain to counsel what I
18 plan to do next. I want to hear from the United States
19 Probation Officer, Sandra Day, who's been listening to all of
20 this. She's made two recommendations against release based on
21 concerns about dangerousness to the community.

22 So let me turn to Ms. Day, who is on the screen. You
23 can see her. And let me get your views about this. Has
24 anything that's occurred today changed your recommendation?

25 MS. DAY: Your Honor, I have been staffing with my

1 co-worker, who was also in the United States Air Force, and he
2 is saying that training -- he's saying training as an ISO is a
3 pretty typical thing for most, because he did security, also.
4 But it sounds to me like this individual might have further
5 training, which is a big concern. And due to the nature of the
6 offense, if he's found guilty, or -- well, at this point he's
7 still presumed innocent, Your Honor. But the nature of the
8 offense is a concern for us.

9 However, if you're inclined to release, I can't say
10 that placing him at La Posada Halfway House with a GPS would
11 absolutely prevent any type of violence, because he can cut off
12 the bracelet and flee. However, if he -- it seems to me that
13 just due to the nature of the offense, Your Honor, and the
14 documents presented, he does present a danger to the community
15 and it is a concern for Pretrial Services.

16 If you were to release and let him go back to the
17 base, we could still supervise him there, as well. It just
18 wouldn't be as close. So he could have possibly two agencies
19 supervising him. But I still -- if he was still able to have
20 access to firearms in any way, that would be a concern.

21 So Your Honor, I just think that at this time -- I
22 apologize for pausing, because he is presumed innocent at this
23 time. I would just recommend continued detention, Your Honor,
24 at this time.

25 THE COURT: You mentioned a halfway house. Is that

1 available at this time?

2 MS. DAY: Yes, it is, Your Honor. And he has been
3 in, basically, quarantine for 20 days at the jail, so he would
4 be eligible for release, probably today.

5 THE COURT: If he were to be released to La Posada,
6 in the past I've experienced situations where release to
7 La Posada was combined with conditions that he is restricted to
8 the premises instead of being able to leave to work during the
9 day or to visit his lawyers, and so on, that it would be
10 full-time at La Posada and monitored by an ankle bracelet. Is
11 that a possibility in this case?

12 MS. DAY: Yes, Your Honor. We do have both GPS and
13 the radio-frequency units available at this time, and there is
14 bed space available at La Posada. And the component, or we
15 would recommend -- home incarceration, he wouldn't be able to
16 go anywhere. But home detention, he would be able to go visit
17 with his attorney and attend counseling, if need be.

18 THE COURT: Well, under home incarceration, his
19 lawyer could visit him at La Posada, could he not?

20 MS. DAY: Yes, Your Honor.

21 THE COURT: Okay. Any other observations or comments
22 you want to make?

23 MS. DAY: No, Your Honor.

24 THE COURT: Okay. Let me turn to Mr. Romero and have
25 you make a proposal of release under conditions.

1 MR. ROMERO: Your Honor, obviously without going into
2 my closing argument, I would just inform the Court that, of
3 course, any condition less than full detention for Mr. Justice
4 is appropriate given that presumption of innocence and given
5 that he has actually proven himself to be compliant with the
6 prior conditions of release that were set in an identical case,
7 essentially. And Your Honor, La Posada would be obviously
8 something that we would not be opposed to, as compared to the
9 conditions of confinement that he's facing at this time.

10 His prior conditions of detention under his pending
11 UCMJ case would also be something that we would not object to,
12 because I have confidence in this young man that he will be
13 compliant because he has a record of being compliant. The
14 access to these firearms and the access to this literature goes
15 back to 2015.

16 THE COURT: well, let me ask this, and Captain
17 Saulter may be the person to respond to it. If I were to order
18 conditions of release that confined Mr. Justice to La Posada
19 Halfway House with GPS or other monitoring, and a condition
20 that he is restricted to La Posada, cannot go elsewhere, cannot
21 go visit his lawyer, his lawyer can come see him, but if I were
22 to order such, what happens to his current conditions regarding
23 the military charges?

24 CAPTAIN SAULTER: I would say that's an interesting
25 question, Your Honor. Essentially, right now the only reason

1 he's still in the military is because he's in confinement,
2 which is what has extended his term of service, because they
3 call what he's currently in lost time. That's what the
4 Government advocated for at the preliminary hearing. I'm not
5 sure how the halfway house would weigh into that. He might
6 still be coded civilian confinement, but he might be coded
7 present for duty, depending on what you described, if he could
8 still go to work every day. Plenty of military members live
9 off the base. So that's, honestly, a personnel question.

10 THE COURT: Okay.

11 CAPTAIN SAULTER: Thank you, Your Honor.

12 THE COURT: Thank you, Captain Saulter.

13 well, let me ask counsel for the Government to
14 respond to a proposal that he be released to La Posada Halfway
15 House and restricted to there under GPS monitoring.

16 MR. STANFORD: Your Honor, we just heard the United
17 States Probation Office say how easy it would be for him to
18 escape there. He can cut it off. People escape from La Posada
19 all the time. Imbeciles, imbeciles without any training escape
20 from La Posada. We have somebody who is bright and capable and
21 resourceful.

22 Your Honor, La Posada, or any kind of confinement
23 like that, presents just an untenable situation. This is
24 somebody who has been trained to escape from situations like
25 that, trained to escape.

1 THE COURT: What is your concern? That if he were at
2 La Posada under GPS monitoring with an ankle bracelet, that he
3 would cut the ankle bracelet off, somehow acquire an arsenal of
4 weapons --

5 MR. STANFORD: It doesn't have to be an arsenal.

6 THE COURT: Well, acquire a single --

7 MR. STANFORD: Again, Your Honor, I'm confused. I'm
8 sorry. We have a trained military specialist, and again,
9 imbeciles get guns on the street every day. He can find one
10 ten times easier than someone without his training, and he
11 knows how to use it.

12 I'm not saying that he's going to escape La Posada
13 and begin, once again, amassing a stockpile of weapons and
14 ammo, but he might. I think he's shown some anti-authoritarian
15 tendencies, he's shown that he was planning something pretty
16 scary, and he's got the training to do it.

17 And then we've got a United States Magistrate Judge
18 that found he was a danger, we have the United States Probation
19 Officer issuing two reports, and then today stating that the
20 Probation Office believes he's a danger and should not be
21 released to third-party custody, and we've got quite a bit of
22 evidence that he was engaging in at least the preplanning
23 stages of something pretty scary. So I'm sort of at a loss for
24 how to answer any further questions about it.

25 To the United States, the writing is on the wall.

1 You've got -- I wrote them down while we were sitting here.
2 You've got all these cities, Your Honor. Christchurch,
3 El Paso, Las Vegas. All these cities, you know. In the United
4 States' estimation, we have narrowly avoided adding Albuquerque
5 to that list.

6 So I think the idea of him cutting his ankle bracelet
7 loose at La Posada, or sneaking out from Kirtland Air Force
8 Base in the middle of the night and simply fleeing, I think
9 that's the minimum that we're facing. I absolutely believe
10 that a guy who made a bug out list, a guy who planned for
11 whatever he was planning, already today sitting in court knows
12 how he plans to escape from whatever soft third-party custody
13 we put him in. The hardest one we could impose upon him still
14 isn't enough to assure that a person with his training will
15 stay where we want him to.

16 THE COURT: Let me ask if you know the answer to the
17 question that I posed to Captain Saulter, about what would
18 happen if I were to order his release to La Posada Halfway
19 House under strict conditions. How would that impact the
20 military justice proceedings?

21 MR. STANFORD: I honestly don't know. I have been
22 approving every request for him to travel to their hearings
23 with the United States Marshals accompanying him. There have
24 been, by my last count, five such appearances where my office,
25 in cooperation with the Air Force, has made him available for

1 every single hearing. You know, without even asking 20
2 questions, we're making him available as needed. I don't know
3 that it would be as easy with La Posada. It might be even
4 easier. But, you know, the inconvenience of doing it the way
5 we've been doing it, keeping him in jail with the Marshals
6 guarding him, that's been working just fine. I've been
7 agreeing to everything.

8 So I don't think any modification is needed to serve
9 his Air Force prosecution, which, Your Honor, we have
10 jurisdiction over. We're cooperating, but I think the offenses
11 he faces here are far more serious than what he faces over
12 there. So my preference is that our case be given kind of
13 first priority with all these questions.

14 THE COURT: Well, my question is, do I have the legal
15 authority to do that.

16 MR. STANFORD: I don't know.

17 MR. ROMERO: Your Honor, may I respond?

18 THE COURT: If you know the answer, sure.

19 MR. ROMERO: Your Honor, similar to what has occurred
20 at the Cibola County Detention Center, whenever the military
21 authorities have requested his presence there by a writ of
22 habeas corpus or some similar document with the concurrence of
23 the Government, he's been allowed to be transported or has been
24 transported to appear for those proceedings.

25 Yes, Your Honor, in your order setting conditions of

1 release, that would be another condition. In other words, your
2 condition would expressly indicate that he is to make himself
3 available for all scheduled military court proceedings, and
4 Captain Saulter or I would take him to those proceedings, as
5 had occurred previously when he was on conditions of release
6 and in full compliance.

7 THE COURT: Okay. Well, I'm still at a little bit of
8 a loss as to what my authority is in terms of ordering a
9 release to La Posada, for example, in terms of whether that
10 conflicts with the authority of the Air Force.

11 MR. ROMERO: Your Honor, as the Court recalls, and
12 Captain Saulter can confirm, at the February 26th pretrial
13 confinement hearing, he was released, essentially, on
14 conditions, and my understanding of the conditions was he had
15 an initial hard 72-hour hold where he was not allowed to leave
16 the base, which he complied with, he was required to go -- or
17 recommended, which he did, to submit to a mental health eval,
18 which he did, and then because he's still an active duty
19 service member, he was given an alternate duty station or work
20 assignment to report to.

21 But other than that, and Captain Saulter can correct
22 me if I'm mistaken, other than that, he was free to go on and
23 off the base as he pleased, and that state of affairs existed
24 for approximately 17 or 18 days before he was arrested in this
25 case, Your Honor.

1 THE COURT: Mr. Stanford.

2 MR. STANFORD: None of the materials found on his
3 phone, the plans and all that, were known to the people who
4 made those decisions. So he was released on conditions and he
5 was evaluated by the mental health evaluator before they knew
6 anything about what was on his phone. So it's sort of
7 irrelevant that they let him out on conditions and he did well,
8 because he thought he got away with it. He didn't realize they
9 were going to get all the materials from his phone.

10 And when the judge -- it's not a judge, it's a
11 hearing officer. When the hearing officer ordered him
12 released, he had no idea what was on his phone. I'm quite sure
13 they would sing a different tune if they were to revisit that
14 hearing today.

15 MR. ROMERO: Your Honor, may Captain Saulter address
16 that point with regard to the subsequently discovered phone
17 material?

18 THE COURT: Sure.

19 CAPTAIN SAULTER: Your Honor, I apologize in advance.
20 Our system of doing things in the military is a little strange
21 sometimes, and our rules are somewhat analogous to the rules
22 here, but also somewhat completely different.

23 The military does have the capability to renew their
24 attempt at placing Airman Justice in pretrial confinement if
25 they discover new information. So essentially, if the idea is

1 that that information wasn't available at the original hearing,
2 then they can go back to the same Pretrial Confinement Review
3 Officer, or a different one on Kirtland Air Force Base, present
4 new information and try again to have him placed in a military
5 pretrial confinement. So understanding what is being said,
6 that that information, at least some of it wasn't presented at
7 the pretrial confinement hearing, that is contemplated by the
8 rules and able to be addressed subsequently.

9 THE COURT: well, what is the likelihood that that
10 will happen?

11 CAPTIAN SAULTER: Given the commitment of the United
12 States Government to keep Airman Justice thus far detained, I
13 would say -- Government counsel for the case is also in the
14 courtroom. But I would imagine they might try. I don't know
15 that the Pretrial Confinement Review Officer is going to be
16 convinced by simply the materials put forth here today.

17 THE COURT: well, what would prompt that type of
18 review in the military justice system?

19 CAPTAIN SAULTER: His commander would order him into
20 confinement again, if his commander believed that he had new
21 information to substantiate that confinement, and then the
22 Kirtland Air Force Base legal office would pursue another
23 hearing within seven days of the imposition of that
24 confinement, if they decided to go that route. His commander
25 alternatively could order any pretrial restraints. So we have

1 pretrial confinement, pretrial restraint. He could order any
2 amount of pretrial restraint to include restriction to base, to
3 include alternate duty locations, to include conditions on
4 release.

5 After the mental health evaluation, his commander
6 found that none of those were necessary. In the military,
7 we're required to use the least restrictive means, and his
8 commander found after the mental health evaluation that no
9 additional requirements were necessary to have him appear at
10 hearings and not cause any other serious misconduct.

11 THE COURT: How would someone in the military justice
12 system initiate the requested review given the materials that
13 were found subsequent to his release in the military?

14 CAPTAIN SAULTER: Yes, Your Honor. What they would
15 have done, instead of going to the AFT and the DOJ, which had
16 already declined prosecution in the case previously, they could
17 have simply just taken the same information back to the
18 commander and told the commander what the information was to
19 see if that prompted the commander to order Airman Justice back
20 into confinement.

21 THE COURT: Can that still be done?

22 CAPTAIN SAULTER: Yes, it could.

23 THE COURT: And who would initiate that?

24 CAPTAIN SAULTER: That would be essentially the
25 commander, but usually through the function of the

1 investigators and the legal office. So basically, they would
2 be the ones that would typically advise the commander on
3 whether that was a good idea, and then the same requirements
4 from the first hearing would then be in place.

5 So from the imposition of confinement, military
6 confinement, there would have to be a 72-hour determination by
7 the commander that it's still necessary, and then a seven-day
8 hearing by the Pretrial Confinement Review Officer that this is
9 new information that justifies the confinement.

10 THE COURT: Well, has the office considered this
11 information?

12 CAPTAIN SAULTER: They've had access to it, Your
13 Honor.

14 THE COURT: And do you know if they made a decision
15 one way or the other?

16 CAPTAIN SAULTER: I think what they decided to do was
17 to seek the AFT and the Department of Justice to take
18 jurisdiction over one of the myriad of offenses so that they
19 could seek civil pretrial detention. The standard in the
20 military is high once someone has been found, by a
21 preponderance of the evidence by a neutral officer, to be not a
22 risk of flight and not a risk for serious misconduct. I have
23 never seen or heard of a successful attempt to present new
24 information and then, without new misconduct, having that
25 person, you know, put back into pretrial confinement.

1 So essentially, they're saying they found new
2 evidence, not new misconduct, so I would assume that the
3 likelihood of success at the pretrial confinement hearing would
4 be low.

5 THE COURT: Okay. Thank you, Captain Saulter.

6 Mr. Mote, let me ask, do you have questions you want
7 to ask Captain Saulter about this?

8 MR. MOTE: Your Honor, I would just like to address
9 the Court on the information that was just provided. May I
10 approach the podium, Your Honor?

11 THE COURT: Yes, please do.

12 MR. MOTE: I'd like to address the Court based on the
13 information that was just provided to the Court. What you just
14 heard, Your Honor, from the defense attorney that represents
15 the Senior Airman in his UCMJ case is all mere speculation and
16 conjecture. What happens when you release this Defendant to
17 military justice control is totally within the purview of the
18 military justice commander over there. He could decide, I
19 don't want to do anything, I'm just going to let him go back to
20 work, and Your Honor, as we've already elicited from testimony
21 here today, the Defendant would have the ability to drive right
22 off the base and be out of here to Timbuktu before the sun goes
23 down, because there is nothing -- if this Court releases him to
24 military control, their authority is going to come from that
25 book that I had the witness look at earlier, which is the

1 Uniform Code of Military Justice, Your Honor.

2 So if this Court is inclined to release him to
3 military control, the Government's concern is that there is no
4 way that we are telling the military how to conduct their
5 business and how to initiate the UCMJ proceeding, Your Honor.

6 THE COURT: Let me make it clear, I'm not inclined to
7 release him to control of the military.

8 MR. MOTE: Okay, Your Honor.

9 THE COURT: What I'm trying to figure out is whether
10 there's a combination of conditions that includes release to
11 La Posada Halfway House that would make sure that the Defendant
12 is not a danger to the community, and I'm kind of stuck on the
13 issue about my authority to make that decision independent of
14 whatever the military justice system wants to do. For example,
15 if I released the Defendant to La Posada Halfway House under
16 conditions and there was another review by the military of the
17 information they didn't have previously, they may then take him
18 into custody.

19 MR. MOTE: Your Honor, that's an interesting
20 question, but he is currently in our custody, so I think in
21 order to do so, they would have to seek a writ in order to
22 bring him back into their custody.

23 THE COURT: Do you agree with that, Mr. Romero?

24 MR. ROMERO: I do, Your Honor. And I would just add
25 that both, oddly -- or not so oddly, the two agencies have been

1 copacetic and cooperating with each other. In other words, it
2 was after he was released and after, according to Captain
3 Saulter, that ATF had taken a pass on the case that then it was
4 picked up by the AFT and U.S. Attorney's Office. So there's
5 been coordination in that regard, Your Honor.

6 MR. MOTE: I have nothing further, Your Honor.

7 THE COURT: All right, thank you. You may have a
8 seat. And Ms. Day, is there anything about what you've heard
9 since you last spoke that changes your point of view?

10 MS. DAY: No, Your Honor.

11 THE COURT: Based primarily on the recommendations of
12 Probation, it'll be my finding that there are no conditions or
13 combination of conditions that will reasonably assure the
14 safety of the community if the Defendant were to be released
15 pretrial. I think it is a difficult question, but I believe
16 there is sufficient evidence of potential danger to support the
17 recommendation of Probation. So I'll deny the appeal of the
18 detention order.

19 I also took into account the very thorough review
20 done by Judge Khalsa at the hearing on, I think it was
21 April 16th -- I'm sorry, on March 19th. My apologies. So
22 given all of that, I will require that the Defendant be
23 detained finding a potential dangerousness to the community if
24 he were to be released.

25 Now, let me ask counsel about where you stand in this

1 case and when we could go to trial.

2 MR. STANFORD: You know, strangely, Your Honor, after
3 all the lawyering that's been done on this case, the underlying
4 facts that would proven the charges are fairly simple. The
5 Government can be ready fairly quickly.

6 THE COURT: How many witnesses does the Government
7 have?

8 MR. STANFORD: Half a dozen, maybe. That may be a
9 generous estimation on my part.

10 THE COURT: well, let's walk through them, if you can
11 identify who they are as of today.

12 MR. STANFORD: I don't recall everybody's name.
13 There certainly would be the AFT examiner who will certify that
14 these devices were, in fact, silencers prohibited under the
15 National Firearms Act and other statutes. There will be --

16 THE COURT: On that witness, how long would the
17 testimony take?

18 MR. STANFORD: From the Government? No more than an
19 hour-and-a-half.

20 THE COURT: what about cross-examination?

21 MR. ROMERO: Your Honor, I would say -- I haven't
22 given it a lot of thought, to be honest with Your Honor, but I
23 would say approximately the same period of time.

24 THE COURT: All right. who is your next witness?

25 MR. STANFORD: The case agent from AFT, Special Agent

1 Kempton, K-e-m-p-t-o-n.

2 THE COURT: How long do you expect his direct
3 testimony to be?

4 MR. STANFORD: A couple of hours.

5 THE COURT: And for cross-examination?

6 MR. STANFORD: This is Agent Kempton, Your Honor. A
7 couple of hours.

8 THE COURT: Okay. For cross-examination?

9 MR. ROMERO: Approximately the same time, Your Honor.

10 THE COURT: who's next?

11 MR. STANFORD: Special Agent Nathaniel Sorenson,
12 probably three hours.

13 THE COURT: And cross-examination?

14 MR. ROMERO: Same, Your Honor.

15 THE COURT: Is he the case agent?

16 MR. STANFORD: He is the OSI. We have co-case agents
17 here. One from AFT and one from Air Force OSI.

18 THE COURT: And who is your one from Air Force?

19 MR. STANFORD: Sorenson.

20 THE COURT: Okay. who's next?

21 MR. STANFORD: There's going to be at least one or
22 two tech agents who downloaded the stuff from the phone. As I
23 said, we're still sifting through some of the hard drives and
24 other electronic media of the investigation, and I suspect
25 there will be a couple of tech agents or specialists on that

1 front, and they may be, you know, two hours each.

2 THE COURT: what all are they going to testify about?

3 MR. STANFORD: What processes they used to extract
4 the information, what they found, their work experience, their
5 expertise, things like that.

6 THE COURT: And for cross-examination of these two
7 tech agents?

8 MR. ROMERO: Approximately half that time I would
9 imagine, Your Honor.

10 THE COURT: All right. Any other witnesses?

11 MR. STANFORD: Your Honor, I'm guessing there are at
12 least one or two agents from OSI who assisted in serving the
13 search warrant at Airman Justice's residence. I would guess
14 they're a couple of hours each.

15 THE COURT: What's the substance of their testimony?
16 what they found at the residence?

17 MR. STANFORD: Things that they found. You know,
18 their participation in the search of the house. Expanding
19 on -- you know, Agent Sorenson oversaw this, but he's one guy.
20 There were many people looking at the house, and they will
21 provide the complete picture of everything found at the house,
22 and where, and in what condition, that kind of thing.

23 THE COURT: Okay. How long do you think the search
24 agents will testify?

25 MR. STANFORD: A couple hours for each one. Maybe

1 less.

2 THE COURT: And cross-examination?

3 MR. STANFORD: You know, I tend to be fairly
4 succinct. Some of these estimations may be a little high, but
5 I figure it's better to overestimate for now.

6 THE COURT: And for cross-examination?

7 MR. ROMERO: Half that time, Your Honor.

8 THE COURT: Any other Government witnesses?

9 MR. STANFORD: Not that I can think of right now.

10 THE COURT: How about defense witnesses?

11 MR. ROMERO: Your Honor, my client is likely to
12 testify, as well as either an investigator and/or a firearms
13 expert, and we may have a couple of character witnesses. I
14 imagine maybe about six total witnesses at most. And I would
15 think I would be able to put them all on, with cross, in a full
16 day of trial.

17 THE COURT: Okay. It's going to take the Government
18 at least three days to present its witnesses, so you're going
19 to have four days of testimony, and a day of selecting a jury,
20 opening statements and the like, and time for jury
21 deliberations. It's going to take you a full week, at least.
22 Let's see what our calendar shows after July 6th. What about
23 August?

24 (A discussion was held off the record.)

25 THE COURT: All right, why don't we tentatively

1 schedule the trial to begin on Monday, August the 10th, at
2 9:00. I'm sure we're going to need a pretrial conference
3 sometime in July.

4 (A discussion was held off the record.)

5 THE COURT: I'll set the pretrial conference at 1:30
6 on July 20th.

7 MR. STANFORD: Your Honor, we can take this up
8 another time if you wish, but I just conferred with my
9 co-counsel and we're both unavailable the week of
10 August 10th. But if you wish, we can save that conversation
11 for the pretrial conference on July 20th.

12 THE COURT: What weeks during August do you have
13 available for a week-long trial?

14 MR. STANFORD: One moment, Your Honor. Either of the
15 last two weeks of that month are both clear for my co-counsel
16 and I, Your Honor.

17 (A discussion was held off the record.)

18 THE COURT: What about the week of August 30th, then?

19 MR. STANFORD: We can make that work, Your Honor.

20 THE COURT: And from the defense?

21 MR. ROMERO: Yes, Your Honor.

22 THE COURT: Okay, we'll plan to have the trial
23 beginning 9:00 on August 31st, and still have the pretrial
24 conference at 1:30 on July 20th.

25 Let me ask Mr. Stanford, anything else you want to

1 bring up on behalf of the Government?

2 MR. STANFORD: Not at this time, Your Honor.

3 THE COURT: And Mr. Romero, anything on behalf of the
4 Defendant?

5 MR. ROMERO: No, Your Honor.

6 THE COURT: I thank everyone for your appearances and
7 input today. The Court is in recess at this time.

8 (Proceedings adjourned at 3:43 P.M.)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:20-CR-01210-JAP
)	
CHARLES BRENT JUSTICE,)	
)	
Defendant.)	

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Mary K. Loughran, CRR, RPR, New Mexico CCR #65, Federal
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District Court for the District of New Mexico, do hereby
certify that pursuant to Section 753, Title 28, United States
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the stenographically reported proceedings held in the
above-entitled matter on Tuesday, June 2, 2020, and that the
transcript page format is in conformance with the regulations
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Dated this 25th day of June, 2020.

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